

MAINE STATE LEGISLATURE

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(New Title)
New Draft of: S. P. 778, L. D. 1969
SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 2007

S. P. 804

In Senate, March 14, 1980

Reported by a Majority of the Committee on Judiciary and Printed under Joint Rules No. 2.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

RESOLUTION, Proposing an Amendment to the Constitution Allowing Either the Constitution or Statutes to Determine the Manner of Selection of Judges of Probate and Justices of the Peace.

Be it enacted by the People of the State of Maine, as follows:

Constitution, Art. V, Pt. 1, § 8, first sentence, as repealed and replaced by CR 1975, c. 4, is amended to read:

He shall nominate, and, subject to confirmation as provided herein, appoint all judicial officers, except judges of probate and justices of the peace **if their manner of selection is otherwise provided for by this Constitution or by law**, and all other civil and military officers whose appointment is not by this Constitution, or shall not by law be otherwise provided for.

Constitution, Art. V, Pt. 1, § 8, 3rd ¶, as repealed and replaced by CR 1975, c. 4, is amended to read:

All statutes enacted to carry out the purposes of **the second paragraph** of this section shall require the affirmative vote of two-thirds of the members of each House present and voting.

Constitution, Art. VI, § 4, as amended by CR 1975, c. 7, is further amended to read:

Section 4. Tenure of judicial officers. All judicial officers **appointed by the Governor** shall hold their offices for the term of seven years from the time of their respective appointments (unless sooner removed by impeachment or by address of both branches of the Legislature to the executive, provided further that justices of the peace may be removed from office in such manner as the Legislature may provide); provided, however, that a judicial officer whose term of office has expired or who has reached mandatory retirement age, as provided by statute, may continue to hold office until the expiration of an additional period not to exceed six months or until his successor is appointed, whichever occurs first in time.

Constitutional referendum procedure; form of question; effective date. Resolved: That the city aldermen, town selectmen and plantation assessors of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a statewide election, at the next general election in the month of November following passage of this resolution, to vote upon the ratification of the amendments proposed in this resolution by voting upon the following question:

“Shall the Constitution of Maine be amended to allow either the Constitution or statutes to determine the manner of selection of judges of probate and justices of the peace?”

The legal voters of each city, town and plantation shall vote by ballot on this question, and shall designate their choice by a cross or check mark placed within the corresponding square below the word “Yes” or “No.” The ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns and, if it appears that a majority of the legal votes are in favor of the amendments, the Governor shall proclaim that fact without delay and the amendments shall become part of the Constitution on the date of the proclamation.

Secretary of State shall prepare ballots. Resolved: That the Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this resolution necessary to carry out the purposes of this referendum.

STATEMENT OF FACT

This new draft applies to both judges of probate and justices of the peace. It provides that these officers will be appointed by the Governor and confirmed by the Legislature unless either the Constitution or statutes provide otherwise.

For judges of probate, this will mean that Article VI, section 6, requiring election will continue in effect until it is repealed under the terms of the 1967 constitutional amendment. At that time, the Legislature may consider legislation to make them elective or appointive. If no legislative action occurs, they will be appointed by the Governor.

For justices of the peace, this means that the present statutory language on initial appointment by the Governor and renewal by the Secretary of State will continue in effect until amended or repealed. If it is entirely repealed, the constitutional provision will take effect and they will be appointed by the Governor and confirmed by the Legislature.

For either office, a new constitutional amendment could specifically establish a different selection procedure without making any further change in this section.

The new draft also amends the Constitution to clarify that the legislative two-thirds voting requirement only applies to statutes relating to confirmation of gubernatorial nominees.

It amends the Constitution to clearly state that the provision on judicial tenure only applies to judicial officers appointed by the Governor. This is necessary to avoid automatic seven-year terms for judges of probate and justices of the peace if the Legislature provides a different manner of selection.