

1999 DRAFTING REQUEST

Assembly Joint Resolution

Received: **04/2/99**

Received By: **dykmapj**

Wanted: **Soon**

Identical to LRB:

For: **Mary Hubler (608) 266-2519**

By/Representing: **Lynn Ansfield**

This file may be shown to any legislator: **NO**

Drafter: **dykmapj**

May Contact:

Alt. Drafters:

Subject: **Constitutional Amendments**

Extra Copies: **JTK
JEO
RPN**

Pre Topic:

No specific pre topic given

Topic:

Election of supreme court justices

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	dykmapj 04/28/99	gilfokm 04/28/99	jfrantze 04/29/99	_____	lrb_docadmin 04/29/99		
/1	dykmapj 05/5/99	gilfokm 05/6/99	jfrantze 05/7/99	_____	lrb_docadmin 05/7/99	lrb_docadmin 05/12/99	

FE Sent For:

<END>

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FE Sent For:		1-5-6-99 kmg	JH/10	J/KM 5/7 <END>			

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1?	dykmapj	1/1-4-28-99 Kmg	2/4/99	2/5/99 4/29	submit 1P		

FE Sent For:

<END>



2665

Mary Hubler

State Representative

1999 BILL REQUEST FORM

Drafter: Peter Dykman 266-7098

Date: April 1, 1999

Legislator: Representative Mary Hubler

Person submitting request: Lynn Ansfield 6-2519

Drafting Request: Mary is requesting a joint resolution to amend the Wisconsin Constitution, Article VII, Section 4 (1) to provide for gubernatorial appointment of Supreme Court justices, rather than election. A gubernatorial appointment of a Supreme Court justice, with confirmation by the State Senate, would be for a ten-year term, beginning on August 1 of the appointment year. Unless a vacancy occurs, only one justice could be appointed in any year. During the transition from elective to appointed justices, current justices would be allowed serve out their full terms. They would be eligible for gubernatorial appointment.

This request is confidential.

1981 SENATE JOINT RESOLUTION 40

Chief Clerk's Correction
Chief Clerk's Correction

September 30, 1981 -- Introduced by Senators GEORGE, FLYNN, BRAUN, BERGER and LORGE; cosponsored by Representatives CRAWFORD, NEUBAUER, COGGS, SMITH, HASENOHRL, CZARNEZKI, PLOUS, MENOS and BEHNKE. Referred to Committee on Judiciary and Consumer Affairs.

- 1 To amend section 9 of article VII of the constitution, relating to senate
2 advice and consent for judicial appointments (first consideration).

Analysis by the Legislative Reference Bureau

This constitutional amendment, proposed to the 1981 legislature on "first consideration", provides that all vacancies in the offices of justice of the supreme court or judge of any court of record will be filled upon nomination by the governor and appointment with senate advice and consent. Presently, such vacancies are filled by gubernatorial appointment.

In addition to the substantive change, this resolution also breaks the constitutional provision into subsections to facilitate future amendment and to avoid conflict with other proposed amendments to the provision which may be considered by this legislature.

As a constitutional amendment, the proposal requires adoption by 2 successive legislatures, and ratification by the people, before it can become effective.

Resolved by the senate, the assembly concurring, That:

SECTION 1. Section 9 of article VII of the constitution is amended to read:

[Article VII] Section 9. ~~When--a~~ (1) Any vacancy occurs in the office of justice of the supreme court or judge of any court of record; the--vacancy shall be filled by--appointment upon nomination by the governor, which shall continue and appointment with the advice and consent of the senate. The person so appointed may serve until a successor is elected and qualified.

1 (2) There shall be no election for a justice or judge at the
2 partisan general election for state or county officers, nor within 30 days
3 either before or after such election.

4 Be it further resolved, That this proposed amendment be referred to
5 the legislature to be chosen at the next general election and that it be
6 published for 3 months previous to the time of holding such election.

7

(End)

1 9 8 9 S E N A T E J O I N T R E S O L U T I O N 7

January 11, 1989 - Introduced by Senator GEORGE; cosponsored by Representative BARRETT. Referred to Committee on Judiciary and Consumer Affairs.

1 To renumber and amend sections 7 and 9 of article VII; to amend sections 4
2 (1) and 5 (2) of article VII; and to create sections 4 (4), 5 (4), 7
3 (2) and 9 (2) to (5) of article VII of the constitution, relating to
4 filling judicial vacancies by gubernatorial appointment, subject to
5 voter review at a retention election approximately 2 years after the
6 appointment (first consideration).

Analysis by the Legislative Reference Bureau

This constitutional amendment, proposed to the 1989 legislature on "first consideration", provides for a judiciary in which all justices of the supreme court, court of appeals judges and circuit court judges are initially appointed by the governor, subject to voter review at a retention election approximately 2 years after the appointment. The duration of a full term remains 10 years for justices of the supreme court and 6 years for court of appeals judges and circuit court judges.

Under the existing provisions of the constitution, all of these offices are filled by nonpartisan elections at which any number of candidates may compete with the incumbent and each other for the new term of office. Vacancies in the offices of justice of the supreme court, court of appeals judge or circuit court judge are filled by appointment by the governor.

For all judges, competitive elections are replaced by retention elections: the name of the incumbent is placed on a spring election ballot and the incumbent retains the office when a majority of the voters (voting on the question of retention) vote "yes".

Since 1903, the state constitution has restricted elections to the supreme court to not more than one each year. That approach is retained for the retention elections proposed by the present amendment.

For court of appeals judges and for circuit court judges, the first retention election is held approximately 2 years after the initial appointment. Subsequent retention elections are at the spring election of the year in which each term is regularly scheduled to expire.

As a constitutional amendment, the proposal requires adoption by 2 successive legislatures, and ratification by the people, before it can become effective.

1 Resolved by the senate, the assembly concurring, That:

2 SECTION 1. Section 4 (1) of article VII of the constitution is
3 amended to read:

4 [Article VII] Section 4 (1) The supreme court shall have 7 members
5 who shall be known as justices of the supreme court. ~~Justices shall be~~
6 ~~elected for 10-year terms of office commencing with the August 1 next~~
7 ~~succeeding the election. Only one justice may be elected in any year.~~
8 Any 4 justices of the supreme court shall constitute a quorum for the
9 conduct of the supreme court's business.

10 SECTION 2. Section 4 (4) of article VII of the constitution is
11 created to read:

12 [Article VII] Section 4 (4) A full term of office for a justice of
13 the supreme court shall be 10 years. Only one retention election for
14 justice of the supreme court may be held in any year. Not less than 6
15 months after the date on which an appointed justice of the supreme court
16 takes office, a retention election concerning the appointed justice shall
17 be held at the first spring election at which no other retention election
18 for justice of the supreme court has been scheduled. Thereafter, a
19 retention election shall be held at the spring election every 10th year
20 from the original retention.

21 SECTION 3. Section 5 (2) of article VII of the constitution is
22 amended to read:

23 [Article VII] Section 5 (2) For each district of the court of
24 ~~appeals court~~ there shall be ~~chosen by the qualified electors of the~~
25 ~~district~~ one or more court of appeals judges, residing in the district,
26 as prescribed by law, ~~who~~. Court of appeals judges shall sit as pre-

1 scribed by law. ~~Appeals judges shall be elected for 6-year terms and~~
2 ~~shall reside in the district from which elected.~~ No alteration of dis-
3 trict or circuit boundaries shall have the effect of removing ~~an~~ a court
4 of appeals judge from office during the judge's term. ~~In case of an~~
5 ~~increase in the number of appeals judges, the first judge or judges shall~~
6 ~~be elected for full terms unless the legislature prescribes a shorter~~
7 ~~initial term for staggering of terms.~~

8 SECTION 4. Section 5 (4) of article VII of the constitution is
9 created to read:

10 [Article VII] Section 5 (4) A full term of office for a court of
11 appeals judge shall be 6 years.

12 SECTION 5. Section 7 of article VII of the constitution is renumbered
13 section 7 (1) of article VII and amended to read:

14 [Article VII] Section 7 (1) For each circuit there shall be chosen
15 ~~by the qualified electors thereof~~ one or more circuit court judges,
16 residing in the circuit, as prescribed by law. ~~Circuit judges shall be~~
17 ~~elected for 6-year terms and shall reside in the circuit from which~~
18 ~~elected.~~

19 SECTION 6. Section 7 (2) of article VII of the constitution is
20 created to read:

21 [Article VII] Section 7 (2) A full term of office for a circuit
22 court judge shall be 6 years.

23 SECTION 7. Section 9 of article VII of the constitution is renumbered
24 section 9 (1) of article VII and amended to read:

25 [Article VII] Section 9 (1) ~~When a~~ Any vacancy ~~occurs~~ in the office
26 of justice of the supreme court, court of appeals judge or circuit court
27 judge of any court record, the vacancy shall be filled by appointment by
28 the governor, ~~which shall continue until a successor is elected and~~

1 ~~qualified. There shall be no election for a justice or judge at the par-~~
2 ~~tisan general election for state or county officers, nor within 30 days~~
3 ~~either before or after such election~~ for the balance of an unexpired term
4 or for a full term commencing on August 1.

5 SECTION 8. Section 9 (2) to (5) of article VII of the constitution
6 are created to read:

7 [Article VII] Section 9 (2) (a) Whenever there is a vacancy on the
8 supreme court, court of appeals or any circuit court, the governor shall,
9 as further provided by law, make an appointment to fill the vacancy.

10 (b) If the balance of the unexpired term is less than one year, the
11 unexpired term vacancy need not be filled.

12 (c) Any law to create a new judgeship on the court of appeals or on
13 any circuit court shall specify the time for submitting the nomination and
14 for holding the first retention election for the new office.

15 (d) When a vacancy will occur on a specified future date due to a
16 retirement under section 24 (2) of this article or because a justice of
17 the supreme court, court of appeals judge or circuit court judge has filed
18 an irrevocable declaration to resign on the date specified, the governor
19 may appoint a successor before the vacancy occurs.

20 (3) (a) Only one term of justice of the supreme court may expire in
21 each year.

22 (b) Within any district of the court of appeals, only one term of
23 court of appeals judge may expire in each year until the number of judges
24 in the district exceeds 6. The year of expiration shall be an odd-num-
25 bered year until the number of judges in the district exceeds 3.

26 (c) Within any judicial circuit, only one term of circuit court judge
27 may expire in each year until the number of judges in the circuit exceeds

1 6. The year of expiration shall be an odd-numbered year until the number
2 of judges in the circuit exceeds 3.

3 (4) For any judge appointed to the court of appeals or to the circuit
4 court for a full term or for the balance of an unexpired term with 3 or
5 more years remaining, the first retention election shall be held at the
6 spring election of the first year commencing at least 12 months after the
7 date on which the judge takes office. Thereafter, all retention elections
8 shall be at the spring election of the year in which the judge's term of
9 office is regularly scheduled to expire as provided by law.

10 (5) (a) At any retention election, the question before the voters
11 shall be: "Shall justice (judge) _____ of the supreme court (court of
12 appeals, circuit court) be retained in office?" and shall permit voters to
13 vote either "yes" or "no" on the question.

14 (b) The incumbent justice or judge shall be retained in office when a
15 majority of the voters, voting on the question of retention, vote "yes".

16 (c) If less than a majority vote "yes" on the question of retention,
17 the office of the incumbent justice or judge shall be deemed vacant no
18 later than August 1 of the year in which the retention question was sub-
19 mitted at the spring election.

20 SECTION 9. NUMBERING OF NEW PROVISIONS. The new subsections of sec-
21 tions 4, 5, 7 and 9 of article VII of the constitution, created in this
22 joint resolution, shall be designated by the next higher open whole sub-
23 section numbers in their respective sections if, prior to or simulta-
24 neously with the ratification by the people of the amendment proposed in
25 this joint resolution, any other ratified amendment has created section 4
26 "(4)", 5 "(4)", 7 "(2)" or 9 "(2)", "(3)", "(4)" or "(5)" of article VII
27 of the constitution of this state. If several ratified amendments
28 simultaneously create new subsections of section 4, 5, 7 or 9 of article

1 VII, the chief of the legislative reference bureau shall determine the
2 sequence and the numbering.

3 Be it further resolved, That this proposed amendment be referred to
4 the legislature to be chosen at the next general election and that it be
5 published for 3 months previous to the time of holding such election.

6

(End)



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1999 ASSEMBLY JOINT RESOLUTION



1 **To amend** sections 4 (1) and 10 (1) of article VII, **to renumber and amend** section
 2 9 of article VII; and **to create** section 9 (2) of article VII and section 17 of article
 3 XIV of the constitution; **relating to:** appointment of justices of the supreme
 4 court (first consideration).

Analysis by the Legislative Reference Bureau

This proposed constitutional amendment, proposed to the 1999 legislature on first consideration, changes the method of selection of justices of the supreme court from election to appointment by the governor with the advice and consent of the senate.

The justices currently serving will serve the remainder of their terms for which elected. When vacancies occur before expiration of a 10-year term or when a 10-year term ends, a person will be appointed by the governor for a full 10-year term and will take office after confirmation by the senate. However, if the service of an appointive justice of the supreme court for the full 10-year term of office would cause the appointee to serve for a term of office that would expire in the same year that the term of office of another justice of the supreme court expires, the term of office of the appointee shall expire on August 1 in the first year preceding that year in which no term of office of any other justice of the supreme court expires.

A proposed constitutional amendment requires adoption by 2 successive legislatures, and ratification by the people, before it can become effective.

1 ***Resolved by the assembly, the senate concurring, That:***

2 **SECTION 1.** Section 4 (1) of article VII of the constitution is amended to read:

3 [Article VII] Section 4 (1) The supreme court shall have 7 members who shall
4 be known as justices of the supreme court. Justices shall be elected nominated by
5 the governor and, with the advice and consent of the senate, appointed for 10-year
6 terms of office commencing with the August 1 next succeeding the election
7 appointment, which term of office shall continue until a successor is appointed and
8 qualified. Only one justice may be elected appointed to serve for a full term in any
9 year. Any 4 justices of the supreme court shall constitute a quorum for the conduct
10 of the supreme court's business.

11 **SECTION 2.** Section 9 of article VII of the constitution is renumbered section 9
12 (1) of article VII and amended to read:

13 [Article VII] Section 9 (1) When a vacancy occurs in the office of ~~justice of the~~
14 ~~supreme court or judge~~ of any court of record other than that of justice of the supreme
15 court, the vacancy shall be filled by appointment by the governor, which shall
16 continue until a successor is elected and qualified. There shall be no election for a
17 ~~justice or judge~~ at the partisan general election for state or county officers, nor within
18 30 days either before or after such election.

19 **SECTION 3.** Section 9 (2) of article VII of the constitution is created to read:

20 [Article VII] Section 9 (2) (a) When a vacancy occurs in the office of justice of the
21 supreme court before expiration of the full 10-year term of office, the vacancy shall
22 be filled by nomination and, with the advice and consent of the senate, appointment
23 by the governor. Except as otherwise provided in ~~paragraph~~ (b), the term of office of

per.

1 a justice appointed to fill a vacancy shall be for a full term of office of 10 years,
2 commencing upon qualification and ending on August 1 of the 10th year beginning
3 after appointment, which shall continue until a successor is appointed and qualified.

4 (b) If the service for the term prescribed in ~~paragraph~~^{par.} (a) would cause the
5 appointee to serve for a term of office that would expire in the same year that the term
6 of office of another justice of the supreme court expires, the term of office of the
7 appointee shall expire on August 1 in the first year preceding that year in which no
8 term of office of any other justice of the supreme court expires.

9 **SECTION 4.** Section 10 (1) of article VII of the constitution is amended to read:

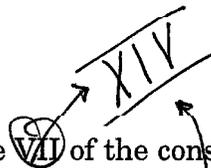
10 [Article VII] Section 10 (1) No justice of the supreme court or judge of any court
11 of record shall hold any other office of public trust, except a judicial office, during the
12 term for which elected or appointed. No person shall be eligible to the office of judge
13 who shall not, at the time of election or appointment, be a qualified elector within the
14 jurisdiction for which chosen.

15 **SECTION 5.** Section 17 of article XIV of the constitution is created to read:

16 [Article XIV] Section 17 (1) The changes to the constitution made by this
17 1999/2001 amendment first apply to vacancies in the office of justice of the supreme
18 court that occur after the ratification of this subsection.

19 (2) If a person is elected to a term of office of supreme court justice before
20 ratification of this subsection, the term of that person expires at the end of the term
21 for which elected.

22 **SECTION 6. Numbering of new provision.** The new section 17 of article XIV
23 of the constitution created in this joint resolution shall be designated by the next
24 higher open whole section number in that article if, before the ratification by the
25 people of the amendment proposed in this joint resolution, any other ratified



1 amendment has created a section 17 of article VII of the constitution of this state.
2 If one or more joint resolutions create a section 17 of article VII simultaneously with
3 the ratification by the people of the amendment proposed in this joint resolution, the
4 sections created shall be numbered and placed in a sequence so that the sections
5 created by the joint resolution having the lowest enrolled joint resolution number
6 have the numbers designated in that joint resolution and the sections created by the
7 other joint resolutions have numbers that are in the same ascending order as are the
8 numbers of the enrolled joint resolutions creating the sections.

9 ***Be it further resolved, That*** this proposed amendment be referred to the
10 legislature to be chosen at the next general election and that it be published for 3
11 months previous to the time of holding such election.

12 (END)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2665/P1
PJD:kmg:jf

SOON

draft
run

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1999 ASSEMBLY JOINT RESOLUTION

- 1 **To renumber and amend** section 9 of article VII; **to amend** sections 4 (1) and 10
- 2 (1) of article VII; and **to create** section 9 (2) of article VII and section 17 of article
- 3 XIV of the constitution; **relating to:** appointment of justices of the supreme
- 4 court (first consideration).

Analysis by the Legislative Reference Bureau

This proposed constitutional amendment, proposed to the 1999 legislature on first consideration, changes the method of selection of justices of the supreme court from election to appointment by the governor with the advice and consent of the senate.

The justices currently serving will serve the remainder of their terms for which elected. When vacancies occur before expiration of a 10-year term or when a 10-year term ends, a person will be appointed by the governor for a full 10-year term and will take office after confirmation by the senate. However, if the service of an appointive justice of the supreme court for the full 10-year term of office would cause the appointee to serve for a term of office that would expire in the same year that the term of office of another justice of the supreme court expires, the term of office of the appointee shall expire on August 1 in the first year preceding that year in which no term of office of any other justice of the supreme court expires.

No A

continue for

last

A proposed constitutional amendment requires adoption by 2 successive legislatures, and ratification by the people, before it can become effective.

1 ***Resolved by the assembly, the senate concurring, That:***

2 **SECTION 1.** Section 4 (1) of article VII of the constitution is amended to read:

3 [Article VII] Section 4 (1) The supreme court shall have 7 members who shall
4 be known as justices of the supreme court. Justices shall be elected nominated by
5 the governor and, with the advice and consent of the senate, appointed for 10-year
6 terms of office commencing with the August 1 next succeeding the ~~election~~
7 appointment, which term of office shall continue until a successor is appointed and
8 qualified. Only one justice may be ~~elected~~ appointed to serve for a full term in any
9 year. Any 4 justices of the supreme court shall constitute a quorum for the conduct
10 of the supreme court's business.

11 **SECTION 2.** Section 9 of article VII of the constitution is renumbered section 9
12 (1) of article VII and amended to read:

13 [Article VII] Section 9 (1) When a vacancy occurs in the office of ~~justice of the~~
14 ~~supreme court or judge of any court of record~~ other than that of justice of the supreme
15 court, the vacancy shall be filled by appointment by the governor, which shall
16 continue until a successor is elected and qualified. There shall be no election for a
17 ~~justice or judge~~ at the partisan general election for state or county officers, nor within
18 30 days either before or after such election.

19 **SECTION 3.** Section 9 (2) of article VII of the constitution is created to read:

20 [Article VII] Section 9 (2) (a) When a vacancy occurs in the office of justice of
21 the supreme court before expiration of the full 10-year term of office, the vacancy
22 shall be filled by nomination and, with the advice and consent of the senate,
23 appointment by the governor. Except as otherwise provided in par. (b), the term of

1 office of a justice appointed to fill a vacancy shall ~~be for a full term of office of 10 years,~~
 2 ~~commencing upon qualification and ending on August 1 of the 10th year beginning~~
 3 after appointment, ~~which shall continue until a successor is appointed and qualified.~~
Commence *expire*
An appointee shall serve

4 (b) If the service for the term prescribed in par. (a) would cause the appointee
 5 to serve for a term of office that would expire in the same year that the term of office
 6 of another justice of the supreme court expires, the term of office of the appointee
 7 shall expire on August 1 ~~of the~~ *of the last* year preceding that year in which no term of office
 8 of any other justice of the supreme court expires. ~~is appointed and qualified~~
An appointee shall serve until a successor is appointed and qualified

9 SECTION 4. Section 10 (1) of article VII of the constitution is amended to read:

10 [Article VII] Section 10 (1) No justice of the supreme court or judge of any court
 11 of record shall hold any other office of public trust, except a judicial office, during the
 12 term for which elected or appointed. No person shall be eligible to the office of judge
 13 who shall not, at the time of election or appointment, be a qualified elector within the
 14 jurisdiction for which chosen.

15 SECTION 5. Section 17 of article XIV of the constitution is created to read:

16 [Article XIV] Section 17 (1) The changes to the constitution made by this
 17 1999/2001 amendment first apply to vacancies in the office of justice of the supreme
 18 court that occur after the ratification of this subsection.

19 *The term of* (2) ~~A~~ *the* a person ~~is~~ *X* elected to a term of office of supreme court justice before
 20 ratification of this subsection, ~~the term of that person~~ *X* expires at the end of the term
 21 for which elected.

22 SECTION 6. Numbering of new provision. The new section 17 of article XIV

23 of the constitution created in this joint resolution shall be designated by the next
 24 higher open whole section number in that article if, before the ratification by the
 25 people of the amendment proposed in this joint resolution, any other ratified

1 amendment has created a section 17 of article XIV of the constitution of this state.
2 If one or more joint resolutions create a section 17 of article XIV simultaneously with
3 the ratification by the people of the amendment proposed in this joint resolution, the
4 sections created shall be numbered and placed in a sequence so that the sections
5 created by the joint resolution having the lowest enrolled joint resolution number
6 have the numbers designated in that joint resolution and the sections created by the
7 other joint resolutions have numbers that are in the same ascending order as are the
8 numbers of the enrolled joint resolutions creating the sections.

9 ***Be it further resolved, That*** this proposed amendment be referred to the
10 legislature to be chosen at the next general election and that it be published for 3
11 months previous to the time of holding such election.

12 (END)

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 5/7/99

To: Representative Hubler

Relating to LRB drafting number: LRB-2665

Topic

Election of supreme court justices

Subject(s)

Constitutional Amendments

1. **JACKET** the draft for introduction _____

Hubler

in the **Senate** ____ or the **Assembly** ____ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Attorney Peter J. Dykman, General Counsel
Telephone: (608) 266-7098