

CORRECTED
SESSION OF 2005

**SUPPLEMENTAL NOTE ON
SENATE CONCURRENT RESOLUTION NO. 1606**

As Amended by Senate Committee on
Judiciary

Brief*

SCR 1606 would amend Article 3, Section 5 of the *Kansas Constitution* dealing with the selection of justices of the Kansas Supreme Court to require consent of the Kansas Senate.

The Senate must vote to consent to any appointment made by the Governor not later than 30 days after the appointment is received. If the Senate is not in session and will not be in session within the 30 day time limitation, the president of the Senate shall convene the Senate for the sole purpose of voting on the appointment.

In the event a majority of the Senate does not vote to consent to the appointment, the Governor may appoint another of the three persons whose names were submitted by the Supreme Court Nominating Commission. If the Governor fails to make a subsequent appointment within 15 days after the Senate vote on the previous appointee or if all three persons whose names were submitted to the Governor have been considered by, but did not receive the consent of the Senate, then the Supreme Court Nominating Commission shall submit to the Governor three additional names. The same nomination, appointment and consent procedure shall be followed until a valid appointment has been made.

If the Senate fails to vote on an appointment within the 30 day time limitation, the Senate shall be deemed to have given consent to such appointment.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Background

The Kansas constitutional amendment was supported by Senator Wagle, Senator Schmidt, the Kansas Attorney General and the father of a young woman murdered in Johnson County.

The proposed amendment was opposed by the Kansas Bar Association, and a past president of that group, a retired Kansas Supreme Court Justice, a member of the Kansas Supreme Court Nominating Commission, a representative of the Kansas League of Women Voters and the Kansas Association of Defense Counsel.

Proponents of the amendment argued, among other things, the following. The current selection process of Supreme Court justices is not free from politics - it just substitutes the politics of the Kansas Bar Association and the Governor from broader based political considerations. The current selection process allows election of five of the nine members of the Supreme Court Nominating Commission by approximately 9,500 members of the Kansas Bar (resident attorneys licensed to practice law in Kansas) and this process may violate the one man-one vote principle rooted in the equal protection clause of the Fourteenth Amendment to the *United States Constitution*. Decisions of the Supreme Court reflect the quality of life of the people in Kansas as much as the Executive and Legislative Branches of government, yet the people have no say in selection process. Recent decisions of the Judicial Branch involving the death penalty and school finance reflect the power the court can exercise over the people of Kansas.

Opponents of the amendment argued, among other things, the following. The proposed change would significantly weaken the current merit selection process of justices. The independence of the Judicial Branch must be protected. The confirmation process of United States Supreme Court Justices by the United States Senate does not present a model worth imitation and the process is qualitatively different since justices are appointed for life at the federal level and do not stand for retention election as do justices in Kansas.

The current selection process for Kansas justices requires a constitutional entity known as the Supreme Court Nominating Commission to propose three names for consideration by the Governor. The Governor must choose one of the three to fill the opening on the Court; if the Governor fails to do so, the Chief Justice is constitutionally

obliged to do so. The Nominating Commission consists of nine members: The chairman is an attorney elected by a statewide vote of resident members of the Kansas Bar, four other members are selected one each from each congressional district elected by resident members of the Kansas Bar in that district, and the remaining four members are appointed by the Governor.