

Senate Concurrent Resolution No. 1603

By Committee on Judiciary

2-7

1 A PROPOSITION to amend section 5 of article 3 of the constitution of
2 the state of Kansas; relating to the selection of justices of the supreme
3 court.

4
5 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*
6 *members elected (or appointed) and qualified to the Senate and two-*
7 *thirds of the members elected (or appointed) and qualified to the*
8 *House of Representatives concurring therein:*
9

10 Section 1. The following proposition to amend the constitution of
11 the state of Kansas shall be submitted to the qualified electors of the state
12 for their approval or rejection: Section 5 of article 3 of the constitution
13 of the state of Kansas is hereby amended to read as follows:

14 **"§ 5. Selection of justices of the supreme court.** (a) Any
15 vacancy occurring in the office of any justice of the supreme court
16 and any position to be open thereon as a result of enlargement of
17 the court, or the retirement or failure of an incumbent to file ~~his~~
18 *such justice's* declaration of candidacy to ~~succeed himself~~ *be*
19 *retained in office* as hereinafter required, or failure of a justice to
20 be elected to ~~succeed himself~~ *be retained in office*, shall be filled
21 by appointment by the governor ~~of one of three persons~~
22 ~~possessing the qualifications of office who shall be nominated and~~
23 ~~whose names shall be submitted to the governor by the supreme~~
24 ~~court nominating commission established as hereinafter provided,~~
25 *with the consent of the house of representatives and the senate, of*
26 *a person possessing the qualifications of office.*

27 (b) ~~In event of the failure of the governor to make the~~
28 ~~appointment within sixty days from the time the names of the~~
29 ~~nominees are submitted to him the chief justice of the supreme~~
30 ~~court shall make the appointment from such nominees. No person~~
31 ~~appointed pursuant to subsection (a) of this section shall assume~~
32 ~~the office of justice of the supreme court until the:~~

33 (1) *House of representatives, by an affirmative vote of the*
34 *majority of all members of the house of representatives then*
35 *elected or appointed and qualified, consents to such appointment;*
36 *and*

1 (2) senate, by an affirmative vote of the majority of all
2 members of the senate then elected or appointed and qualified,
3 consents to such appointment.

4 (c) The house of representatives shall vote to consent to any
5 such appointment not later than 30 days after such appointment
6 is received by the house of representatives. If the house of
7 representatives is not in session and will not be in session within
8 the 30-day time limitation, the speaker of the house of
9 representatives shall convene the house of representatives for the
10 sole purpose of voting on such appointment and no other action
11 shall be in order during such session. In the event a majority of
12 the house of representatives vote to consent to the appointment,
13 within 10 days after the house of representatives vote on the
14 previous appointee, such appointee shall be forwarded to the
15 senate to be considered by the senate. In the event of a majority
16 of the house of representatives does not vote to consent to the
17 appointment, the governor shall appoint another person
18 possessing the qualifications of office and such subsequent
19 appointment shall be considered by the house of representatives
20 in the same procedure provided in this article.

21 (d) The senate shall vote to consent to any such appointment
22 not later than 30 days after such appointment is received by the
23 senate. If the senate is not in session and will not be in session
24 within the 30-day time limitation, the president of the senate
25 shall convene the senate for the sole purpose of voting on such
26 appointment and no other action shall be in order during such
27 session. In the event a majority of the senate does not vote to
28 consent to the appointment, the governor shall appoint another
29 person possessing the qualifications of office and such
30 subsequent appointment shall be considered by the house of
31 representatives and the senate in the same procedure as provided
32 in this article.

33 (e) The same appointment and consent procedure shall be
34 followed until a valid appointment has been made. No person
35 who has been previously appointed but did not receive the
36 consent of the house of representatives or the senate shall be
37 appointed again for the same vacancy. If the house of
38 representatives or the senate fails to vote on an appointment
39 within the 30-day time limitation of each body, the house of
40 representatives or the senate, as applicable, shall be deemed to
41 have given consent to such appointment.

42 ~~(e)~~(f) Each justice of the supreme court appointed pursuant
43 to provisions of subsection (a) of this section and consented to

1 *pursuant to the provisions of subsection (c) of this section shall*
 2 *hold office for an initial term ending on the second Monday in*
 3 *January following the first general election that occurs after the*
 4 *expiration of ~~twelve~~ 12 months in office. Not less than ~~sixty~~ 60*
 5 *days prior to the holding of the general election next preceding*
 6 *the expiration of ~~his~~ such justice's term of office, any justice of*
 7 *the supreme court may file in the office of the secretary of state a*
 8 *declaration of candidacy for election to ~~sueceed himself~~ be*
 9 *retained in office. If a declaration is not so filed, the position held*
 10 *by such justice shall be open from the expiration of ~~his~~ such*
 11 *justice's term of office. If such declaration is filed, ~~his~~ such*
 12 *justice's name shall be submitted at the next general election to*
 13 *the electors of the state on a separate judicial ballot, without*
 14 *party designation, reading substantially as follows:*

15 "Shall _____

16 (Here insert name of justice.)

17 _____
 18 (Here insert the title of the court.)

19 be retained in office?"

20 If a majority of those voting on the question vote against
 21 retaining ~~him~~ such justice in office, the position or office which
 22 ~~he~~ such justice holds shall be open upon the expiration of ~~his~~
 23 *such justice's* term of office; otherwise ~~he~~ such justice shall,
 24 unless removed for cause, remain in office for the regular term of
 25 six years from the second Monday in January following such
 26 election. At the expiration of each term ~~he~~ such justice shall,
 27 unless by law ~~he~~ such justice is compelled to retire, be eligible for
 28 retention in office by election in the manner prescribed in this
 29 section.

30 ~~(d) A nonpartisan nominating commission whose duty it~~
 31 ~~shall be to nominate and submit to the governor the names of~~
 32 ~~persons for appointment to fill vacancies in the office of any~~
 33 ~~justice of the supreme court is hereby established, and shall be~~
 34 ~~known as the "supreme court nominating commission." Said~~
 35 ~~commission shall be organized as hereinafter provided.~~

36 ~~(e) The supreme court nominating commission shall be~~
 37 ~~composed as follows: One member, who shall be chairman,~~
 38 ~~chosen from among their number by the members of the bar who~~
 39 ~~are residents of and licensed in Kansas; one member from each~~
 40 ~~congressional district chosen from among their number by the~~
 41 ~~resident members of the bar in each such district; and one~~
 42 ~~member, who is not a lawyer, from each congressional district,~~
 43 ~~appointed by the governor from among the residents of each such~~

1 district.

2 ~~(f) The terms of office, the procedure for selection and~~
3 ~~certification of the members of the commission and provision for~~
4 ~~their compensation or expenses shall be as provided by the~~
5 ~~legislature.~~

6 ~~(g) No member of the supreme court nominating~~
7 ~~commission shall, while he is a member, hold any other public~~
8 ~~office by appointment or any official position in a political party~~
9 ~~or for six months thereafter be eligible for nomination for the~~
10 ~~office of justice of the supreme court. The commission may act~~
11 ~~only by the concurrence of a majority of its members.”~~

12 Sec. 2. The following statement shall be printed on the ballot with
13 the amendment as a whole:

14 *“Explanatory statement.* The purpose of this amendment is to
15 improve transparency to the selection process of supreme
16 court nominees and to do away with the supreme court
17 nominating commission. Currently, the supreme court
18 nominating commission is composed of nine members; four
19 nonlawyer members appointed by the governor and five
20 lawyer members elected by licensed attorneys who are
21 residents of Kansas. Pursuant to the amendment, the governor
22 will appoint a qualified person, and such person's appointment
23 would be required to be consented to by the house of
24 representatives and the senate.

25 “A vote for this proposition would provide a procedure whereby
26 the governor would appoint a person to be a supreme court
27 justice and the house of representatives and the senate, by
28 majority vote, would consent to the appointment of supreme
29 court justices.

30 “A vote against this proposition would continue in effect the
31 current provision whereby the supreme court nominating
32 commission nominates three persons for the office of the
33 supreme court and the governor appoints one of such
34 persons.”

35 Sec. 3. This resolution, if approved by two-thirds of the members
36 elected (or appointed) and qualified to the Senate, and two-thirds of the
37 members elected (or appointed) and qualified to the House of
38 Representatives shall be entered on the journals, together with the yeas
39 and nays. The secretary of state shall cause this resolution to be published
40 as provided by law and shall cause the proposed amendment to be
41 submitted to the electors of the state at the primary election in August in
42 the year 2012 unless a special election is called at a sooner date by
43 concurrent resolution of the legislature, in which case it shall be

- 1 submitted to the electors of the state at the special election.