

SESSION OF 2013

**SUPPLEMENTAL NOTE ON HOUSE CONCURRENT  
RESOLUTION NO. 5002**

As Amended by House Committee on Judiciary

**Brief\***

HCR 5002 would submit to the qualified electors of the State an amendment to Article 3 of the *Kansas Constitution* concerning the method of selection for justices of the Kansas Supreme Court. The amendment would eliminate the Supreme Court Nominating Commission and allow the Governor to appoint a qualified person to the position with the consent of the Senate. Pursuant to this amendment, the Clerk of the Supreme Court would promptly notify the Governor of a vacancy, who would then be required to make an appointment within 60 days of the vacancy. Otherwise, the Chief Justice of the Supreme Court would appoint a qualified person.

In either scenario, the Senate would be required to vote to consent to the appointment within 60 days of receipt of the appointment. If the Senate is not in session and will not be in session within the 60-day time limit, the Senate would be required to vote on the appointment within 20 days of the beginning of the next session. If a majority does not vote to consent to the appointment, the Governor would be required to appoint another qualified person within 60 days of the vote, and the same procedure would be followed until a valid appointment is made. If the Senate fails to vote within the time limit, it would be deemed to have given consent.

The resolution also proposes to add the law concerning the Court of Appeals to the *Kansas Constitution* and would provide for vacancies on that court to be filled in the same

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\*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>

manner as that described above for the Supreme Court. While the method of appointment would be modified, both Supreme Court justices and Court of Appeals judges would continue to be subject to retention elections. Further, the amendment would specify the Court of Appeals would consist of 14 judges, though currently the related statute provides the 14th judge position is subject to appropriations.

If approved by two-thirds of the members of the House and Senate, the amendment would be submitted to the electors in November 2014.

## **Background**

Article 3, Section 5 of the *Kansas Constitution* governs selection of Kansas Supreme Court justices. Since its amendment in 1958, Section 5 has specified any vacancy on the Court shall be filled through the Governor's appointment of one of three candidates nominated by the Supreme Court Nominating Commission (the Commission). The nonpartisan Commission has nine members: a chairman who is an attorney chosen by the members of the Kansas bar; one attorney member from each congressional district chosen by members of the Kansas bar that reside in such district; and one non-attorney member from each congressional district appointed by the Governor.

Kansas statutes govern the Court of Appeals, including the method of filling vacancies on that court. Pursuant to KSA 20-3005, when there is a vacancy, the Commission will nominate and submit the names of three candidates to the Governor, who must then appoint one of these nominees within 60 days. Otherwise, the Chief Justice of the Supreme Court will make the appointment from among the persons nominated. Once appointed, Supreme Court justices and Court of Appeals judges are subject to retention elections following their first full year in office and at the end of each term. Supreme Court Justices serve six-year terms and Court of Appeals judges serve four-year terms.

Article 14, Section 1 of the *Kansas Constitution* allows amendments to be made through approval by popular vote of a legislative proposal. Specifically, it provides that a concurrent resolution originating in either house of the Legislature that is approved by two-thirds of all the members will be considered by Kansas voters at the next election. If a majority of those voting on any such amendment approve the amendment, it becomes a part of the *Kansas Constitution*. When multiple amendments are proposed, a separate vote is taken for each, with no more than five amendments being considered in the same election.

Prior to a hearing on HCR 5002 and related bills and resolutions, the House Committee on Judiciary conducted two days of informational hearings on judicial selection. Proponents of reforming the current selection process who offered testimony included Kris Kobach, Secretary of State; a representative of Americans for Prosperity; and several judges, attorneys, professors, and concerned citizens. Supporters of the current selection process who offered testimony included Lawton R. Nuss, Chief Justice of the Kansas Supreme Court; Thomas E. Malone, Chief Judge of the Kansas Court of Appeals; Anne Burke, Chair of the Kansas Supreme Court Nominating Commission, and other current and former members; representatives of the Kansas Bar Association, Wichita Bar Association, the Kansas Association for Justice, Kansas Association of Defense Counsel, Kansas Appleseed Center for Law and Justice, League of Women Voters of Kansas, Justice at Stake, and various chambers of commerce; and two law professors.

At the Committee's hearing on HCR 5002, additional proponents included Derek Schmidt, Kansas Attorney General and former Senator; current members of the Supreme Court Nominating Commission; and a representative of Kansans for Life. Many of the supporters of the current selection process returned and offered testimony in opposition to the resolution.

The Committee agreed to amend the resolution by adopting technical amendments proposed by the Revisor's Office to correct drafting errors, adding a jurisdiction provision for the Court of Appeals taken from KSA 20-3001, and changing from August 2014 to November 2014 the election at which this amendment would be presented to voters.