

SESSION OF 2013

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 8**

As Amended by House Committee on Judiciary

**Brief\***

SB 8, as amended, would create the Kansas Commission on Judicial Appointments. The Commission would consist of nine members:

- Four non-lawyer members, one from each congressional district, appointed by the Speaker of the House;
- One non-lawyer member from the first congressional district appointed by the House Minority Leader;
- One non-lawyer member from the fourth congressional district appointed by the State Treasurer;
- One lawyer member from the third congressional district appointed by the Chief Justice of the Supreme Court;
- One lawyer member from the second congressional district appointed by the Attorney General; and
- One retired district judge appointed by the Kansas County and District Attorneys Association, who would serve as chairperson of the Commission.

Members would serve two-year terms and be

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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>

reimbursed for travel and other expenses. A majority would constitute a quorum. Final action would require a vote of a majority of the members.

The Commission would be subject to the Kansas Open Meetings Act (KOMA), except it could recess for a closed or executive meeting when considering confidential information related to the appointee's qualifications for office. The relevant section of KOMA would be amended to reflect this exception. Any confidential document or information obtained by the Commission would remain so, and would not be a public record or subject to discovery or subpoena.

When the Governor or Chief Justice appoints a Supreme Court justice or Court of Appeals judge, the Commission would be required to interview the appointee within 30 days and obtain information on the appointee's qualifications. The Commission would be required to prepare a written report of its assessment of the appointee's qualifications, approve the report by a majority of the Commission, and submit the report to the President of the Senate and the Chairperson of the Senate Judiciary Committee within 30 days of the appointment.

The bill would provide that such appointments would be considered and acted upon by the Senate in regular session.

These appointments would be referred to the Senate Judiciary Committee immediately after the Commission's report is received or, if no report is received, on the next legislative day following the deadline for submission of the report. The Judiciary Committee would have 15 legislative days to return the appointment to the Senate with a report. If the Judiciary Committee does not do so, the appointment would be considered returned to the Senate without recommendation on the next legislative day following the deadline.

The Senate would be permitted to consider and act

upon the appointment at any time after it is returned to the Senate. Unanimous consent would be required to permit a motion to confirm before the appointment is returned.

The Act would take effect upon approval by the qualified electors of the state of a revision to Article 3 of the *Kansas Constitution* and the publication of the Act in the statute book.

## **Background**

SB 8 was introduced by Senator Jeff King as a companion bill to SCR 1601, which proposes to amend the *Kansas Constitution* by changing the selection process for appellate judges and justices.

The Senate Judiciary Committee held a joint hearing on SCR 1601 and SB 8. The following conferees testified as proponents: Representative Ed Bideau; Attorney General Derek Schmidt; Judge Anthony Powell; and several law professors, attorneys, and private citizens. A representative of Americans for Prosperity and several private citizens offered written proponent testimony.

Opponents who testified included Chief Judge Thomas Malone of the Kansas Court of Appeals; Anne Burke, chairperson of the Supreme Court Nominating Commission; a former lay member of the Commission; and representatives of the Kansas Bar Association, Kansas Association of Defense Counsel, Defense Research Institute, Kansas Appleseed Center for Law and Justice, Kansas Association for Justice, League of Women Voters, Committee for Economic Development, Institute for Justice, and the MainStream Coalition. Chief Justice Lawton Nuss of the Kansas Supreme Court, two law professors, the Wichita Bar Association, and representatives of various chambers of commerce submitted written opponent testimony.

The Senate Committee amended the bill to change the

name of the Commission from the "Kansas Commission on Judicial Qualifications" to the "Kansas Commission on Judicial Nominations." The Committee also approved an amendment making the Commission subject to KOMA, with an executive session exception for confidential information, and adding a provision regarding confidentiality of documents and information. The Committee recommended the bill be passed as amended.

The Senate Committee of the Whole amended the bill to remove a provision allowing the Senate to consider and act upon an appointment in executive session, with the exception of final action. The Committee of the Whole recommended the bill be passed as amended.

In the House Judiciary Committee, Senator King testified in support of the bill. The House Committee received written opponent testimony from representatives of the Kansas Association for Justice, the Kansas Association of Defense Counsel and Defense Research Institute, the Kansas Bar Association, and the Overland Park Chamber of Commerce.

The House Committee amended the bill by changing the name of the Commission from the "Kansas Commission on Judicial Nominations" to the "Kansas Commission on Judicial Appointments." The Committee also added two positions appointed by the Speaker of the House, added congressional district requirements, deleted a provision allowing for the Commission to elect its chairperson, and made the retired district judge position the chairperson of the Commission. The House Committee recommended the bill be passed as amended.

The Division of the Budget's fiscal note provided for the bill, as introduced, indicates any costs associated with the bill would be negligible. Any fiscal effect associated with SB 8 is not reflected in *The FY 2014 Governor's Budget Report*.