

SESSION OF 2015

**SUPPLEMENTAL NOTE ON HOUSE CONCURRENT  
RESOLUTION NO. 5004**

As Recommended by House Committee on  
Judiciary

**Brief\***

HCR 5004 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 replace the current method of appointment with election of Supreme Court Justices at the next general election. Elections would be partisan and from the state as a whole, and election laws would be applicable. Justices would serve six-year terms and then could seek reelection. A justice already in office would continue to hold the office for the remainder of his or her initial term or the term for which the justice was retained and could run for election unless compelled to retire or if removed from such office. Similarly, the resolution proposes to add governing language for the Court of Appeals, which currently is codified in statute, to the *Kansas Constitution*, including the election of Court of Appeals judges. The amendment also would allow the Supreme Court or Court of Appeals to assign a district judge to serve temporarily on the Court of Appeals.

Finally, the resolution proposes to remove language prohibiting Supreme Court justices from directly or indirectly making any contribution to or holding any office in a political party or organization or taking part in any political campaign.

If approved by two-thirds of the members of the House and Senate, the amendment would be submitted to the electors at the November 2016 general election.

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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>

## **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.

The process for filling vacancies on the Kansas Court of Appeals is governed by statute and was amended by passage of 2013 HB 2019 to allow the Governor, with the consent of the Senate, to appoint a qualified person to fill a vacancy.

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 its hearing on HCR 5004, the House Committee on Judiciary conducted an informational hearing on judicial selection. Proponents of reforming the current selection process who offered testimony included the Attorney General; the Secretary of State; former Representative Kinzer; a representative of the Office of the Governor; a member of the Supreme Court Nominating Commission; representatives of

Americans for Prosperity, Kansans for Life, and the Kansas Republican Party; a law professor; and a concerned citizen.

Supporters of the current selection process who offered testimony included the Chairperson of the Kansas Supreme Court Nominating Commission; representatives of the Kansas Association of Defense Counsel, Kansas Association for Justice, Kansas Bar Association, and League of Women Voters of Kansas; and two law professors.

At the Committee's hearing on HCR 5004, many of the same proponents offered testimony. Additional opponents included representatives of the Kansas Association of School Boards, Mainstream Coalition, and Wichita Bar Association.