

SESSION OF 2015

**SUPPLEMENTAL NOTE ON HOUSE CONCURRENT
RESOLUTION NO. 5005**

As Amended by House Committee on Judiciary

Brief*

HCR 5005 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 appointment 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 then 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

*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>

provide for vacancies on that court to be filled in the same manner as that described above for the Supreme Court. This procedure is already in place in statute for the Kansas Court of Appeals.

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.

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.

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. The resolution would add these provisions to the *Kansas Constitution*.

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 5005, 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 5005, many of the same proponents offered testimony. Additional opponents included representatives of the Kansas Association of School Boards, Mainstream Coalition, and Wichita Bar Association.

The House Committee adopted an amendment to correct the explanatory statement, which described the method of selection for the Court of Appeals in use prior to the 2013 amendment.