

SESSION OF 2022

**SUPPLEMENTAL NOTE ON SENATE CONCURRENT
RESOLUTION NO. 1621**

As Recommended by Senate Committee on
Judiciary

Brief*

SCR 1621 would submit to the qualified electors of the state a proposition to amend Article 3 of the *Kansas Constitution* concerning the method of selection for justices of the Kansas Supreme Court when a vacancy occurs. 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.

*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>

If the resolution is approved by two-thirds of the members of both the House and Senate, the proposed amendment would be submitted to the electors at a special election to be held in conjunction with the primary election on August 2, 2022.

Background

The resolution was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Masterson.

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.

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.

Senate Committee on Judiciary

In the Senate Committee hearing on March 4, 2022 , a law professor, an attorney, and representatives of Americans for Prosperity—Kansas, Family Policy Alliance, and the Kansas Chamber of Commerce testified as **proponents** on the bill. Written-only proponent testimony was provided by Senator Masterson, the Attorney General, and a representative of the Kansas Policy Institute.

Neutral testimony was provided by a former Supreme Court Nominating Commission member.

Representatives of Kansas Appleseed, the Kansas Association of Defense Counsel, the Kansas Bar Association, and the Kansas Trial Lawyers Association testified as **opponents** on the bill. Written-only opponent testimony was provided by a representative of the Kansas Association of School Boards. No other testimony was provided.

Fiscal Information

No fiscal note was available when the Senate Committee took action on the resolution.

Selection of Kansas supreme court justices; Supreme Court Nominating Commission; confirmation; constitutional amendment