

Senate Concurrent Resolution No. 1621

By Committee on Federal and State Affairs

3-1

1 A PROPOSITION to amend sections 5 and 15 of article 3 of the
2 constitution of the state of Kansas; relating to the selection of supreme
3 court justices; providing for senate confirmation; abolishing the
4 supreme court nominating commission.
5

6 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*
7 *members elected (or appointed) and qualified to the Senate and two-*
8 *thirds of the members elected (or appointed) and qualified to the*
9 *House of Representatives concurring therein:*

10 Section 1. The following proposition to amend the constitution of
11 the state of Kansas shall be submitted to the qualified electors of the state
12 for their approval or rejection: Sections 5 and 15 of article 3 of the
13 constitution of the state of Kansas are hereby amended to read as follows:

14 **"§ 5. Selection of justices of the supreme court.** (a) (1) Any
15 vacancy occurring in the office of any justice of the supreme court
16 and any position to be open ~~thereon~~ *on the supreme court* as a
17 result of enlargement of the court, or the retirement or failure of an
18 incumbent to file ~~his~~ *such justice's* declaration of candidacy to
19 ~~succeed himself~~ *be retained in office* as hereinafter required, or
20 failure of a justice to be elected to ~~succeed himself~~ *be retained in*
21 *office*, shall be filled by appointment by the governor ~~of one of~~
22 ~~three persons possessing the qualifications of office who shall be~~
23 ~~nominated and whose names shall be submitted to the governor by~~
24 ~~the supreme court nominating commission established as~~
25 ~~hereinafter provided,~~ *with the consent of the senate, of a person*
26 *possessing the qualifications of office.*

27 (2) *Whenever a vacancy occurs, will occur or a position*
28 *opens on the supreme court, the clerk of the supreme court shall*
29 *promptly give notice to the governor.*

30 ~~(b)(3)~~ (3) *In the event of the failure of the governor to make the*
31 *appointment within sixty days from the time the names of the*
32 *nominees are submitted to him date such vacancy occurred or such*
33 *position became open, the chief justice of the supreme court shall*
34 *make the appointment from such nominees, with the consent of the*
35 *senate, of a person possessing the qualifications of office.*

36 (4) *Whenever a vacancy in the office of justice of the supreme*

1 *court exists at the time the appointment to fill such vacancy is*
2 *made pursuant to this section, the appointment shall be effective at*
3 *the time the appointment is made, but where an appointment is*
4 *made pursuant to this section to fill a vacancy that will occur at a*
5 *future date, such appointment shall not take effect until such date.*

6 *(b) No person appointed pursuant to subsection (a) shall*
7 *assume the office of justice of the supreme court until the senate,*
8 *by an affirmative vote of the majority of all members of the senate*
9 *then elected or appointed and qualified, consents to such*
10 *appointment. The senate shall vote to consent to any such*
11 *appointment not later than sixty days after such appointment is*
12 *received by the senate. If the senate is not in session and will not*
13 *be in session within the sixty-day time limitation, the senate shall*
14 *vote to consent to any such appointment not later than twenty days*
15 *after the senate begins its next session. In the event a majority of*
16 *the senate does not vote to consent to the appointment, the*
17 *governor, within sixty days after the senate vote on the previous*
18 *appointee, shall appoint another person possessing the*
19 *qualifications of office, and such subsequent appointment shall be*
20 *considered by the senate in the same procedure as provided in this*
21 *section. The same appointment and consent procedure shall be*
22 *followed until a valid appointment has been made. No person who*
23 *has been previously appointed but did not receive the consent of*
24 *the senate shall be appointed again for the same vacancy. If the*
25 *senate fails to vote on an appointment within the time limitation*
26 *imposed by this subsection, the senate shall be deemed to have*
27 *given consent to such appointment.*

28 *(c) (1) Each justice of the supreme court appointed pursuant*
29 *to provisions of subsection (a) of this section and consented to*
30 *pursuant to subsection (b) shall hold office for an initial term*
31 *ending on the second Monday in January following the first*
32 *general election that occurs after the expiration of twelve months in*
33 *office.*

34 *(2) Not less than sixty days prior to the holding of the general*
35 *election next preceding the expiration of ~~his~~ the term of ~~office~~, any*
36 *justice of the supreme court, the justice may file in the office of the*
37 *secretary of state a declaration of candidacy for ~~election to succeed~~*
38 *~~himself~~ retention in office. If a declaration is not ~~so~~ filed as*
39 *provided in this section, the position held by such justice shall be*
40 *~~open from the expiration of his~~ vacant upon the expiration of such*
41 *justice's term of office. If such declaration is filed, ~~his~~ such*
42 *justice's name shall be submitted at the next general election to the*
43 *electors of the state on a separate judicial ballot, without party*

1 designation, reading substantially as follows:

2 "Shall _____

3 (Here insert name of justice.)

4 _____
 5 (Here insert the title of the court.)

6 , *Justice of the Supreme Court*, be retained in office?"

7
 8 (3) If a majority of those voting on the question vote against
 9 retaining ~~him~~ *such justice* in office, the position or office which ~~he~~
 10 *such justice* holds shall be ~~open~~ *vacant* upon the expiration of ~~his~~
 11 *such justice's* term of office;. Otherwise ~~he shall~~, unless *such*
 12 *justice is* removed for cause, *such justice shall* remain in office for
 13 the regular term of six years from the second Monday in January
 14 following such election. At the expiration of each term ~~he shall~~,
 15 unless by law ~~he such justice~~ is compelled to retire, *such justice*
 16 *shall* be eligible for retention in office by election in the manner
 17 prescribed in this section.

18 (d) ~~A nonpartisan nominating commission whose duty it shall~~
 19 ~~be to nominate and submit to the governor the names of persons for~~
 20 ~~appointment to fill vacancies in the office of any justice of the~~
 21 ~~supreme court is hereby established, and shall be known as the~~
 22 ~~"supreme court nominating commission."~~ Said commission shall
 23 be organized as hereinafter provided.

24 (e) ~~The supreme court nominating commission shall be~~
 25 ~~composed as follows: One member, who shall be chairman, chosen~~
 26 ~~from among their number by the members of the bar who are~~
 27 ~~residents of and licensed in Kansas; one member from each~~
 28 ~~congressional district chosen from among their number by the~~
 29 ~~resident members of the bar in each such district; and one member,~~
 30 ~~who is not a lawyer, from each congressional district, appointed by~~
 31 ~~the governor from among the residents of each such district.~~

32 (f) ~~The terms of office, the procedure for selection and~~
 33 ~~certification of the members of the commission and provision for~~
 34 ~~their compensation or expenses shall be as provided by the~~
 35 ~~legislature.~~

36 (g) ~~No member of the supreme court nominating commission~~
 37 ~~shall, while he is a member, hold any other public office by~~
 38 ~~appointment or any official position in a political party or for six~~
 39 ~~months thereafter be eligible for nomination for the office of~~
 40 ~~justice of the supreme court. The commission may act only by the~~
 41 ~~concurrence of a majority of its members.~~

42 (4) *If a majority of those voting on the question vote against*
 43 *the justice's retention, the secretary of state, following the final*

1 *canvass of votes on the question, shall certify the results to the*
2 *clerk of the supreme court. Any such justice who has not been*
3 *retained in office pursuant to this section shall not be eligible for*
4 *appointment to the office of justice of the supreme court prior to*
5 *the expiration of six years after the expiration of the justice's term*
6 *of office.*

7 **"§ 15. Removal of justices and judges.** Justices of the
8 supreme court may be removed from office by impeachment and
9 conviction as prescribed in article 2 of this constitution. In addition
10 to removal by impeachment and conviction, justices may be retired
11 after appropriate hearing, upon certification to the governor, by the
12 supreme court ~~nominating commission~~ that such justice is so
13 incapacitated as to be unable to perform adequately ~~his such~~
14 *justice's* duties. Other judges shall be subject to retirement for
15 incapacity, and to discipline, suspension and removal for cause by
16 the supreme court after appropriate hearing."

17 Sec. 2. The following statement shall be printed on the ballot with
18 the amendment as a whole:

19 *"Explanatory statement.* The purpose of this amendment is to
20 provide for senate confirmation of supreme court justices
21 and to eliminate the supreme court nominating commission.
22 The governor will appoint a qualified person, or if the
23 governor fails to act, the chief justice of the supreme court
24 will appoint a qualified person, and such person's
25 appointment will require the consent of the senate. If the
26 senate does not consent to the appointment by a majority
27 vote, the governor will then appoint another qualified
28 person, and such person's appointment will again go to the
29 senate for consent. The same appointment and consent
30 procedure will be followed until a valid appointment is
31 made. If the senate fails to vote on an appointment within 60
32 days, it will be considered that the senate has given consent
33 to the appointment.

34 "A vote for this proposition would abolish the supreme court
35 nominating commission and provide a procedure whereby
36 the governor or chief justice will appoint a person to be a
37 supreme court justice, and such person will only take office
38 if the senate, by majority vote, consents to the appointment.

39 "A vote against this proposition would continue the current
40 system in which justices of the supreme court are appointed
41 by the governor from a list of three individuals submitted by
42 the supreme court nominating commission."

43 Sec. 3. This resolution, if approved by two-thirds of the members

1 elected (or appointed) and qualified to the Senate and two-thirds of the
2 members elected (or appointed) and qualified to the House of
3 Representatives, shall be entered on the journals, together with the yeas
4 and nays. The secretary of state shall cause this resolution to be published
5 as provided by law and shall cause the proposed amendment to be
6 submitted to the electors of the state at a special election, which is hereby
7 called on August 2, 2022, pursuant to section 1 of article 14 of the
8 constitution of the state of Kansas, to be held in conjunction with the
9 primary election held on such date.