

SESSION OF 2013

**SUPPLEMENTAL NOTE ON SENATE CONCURRENT
RESOLUTION NO. 1601**

As Amended by Senate Committee of the Whole

Brief*

SCR 1601 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 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 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 provide for vacancies on that Court to be filled in the same method as that described above for the Supreme Court. Further, the amendment would specify the Court of Appeals

*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>

will consist of 14 judges, though currently the related statute provides the 14th judge position is subject to appropriations. Judges of the Court of Appeals would be subject to retention elections at the first general election after their first full year in office and every four years thereafter.

If approved by two-thirds of the House and Senate, the proposed amendment would be submitted to the electors in August 2014.

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.

Kansas statutes govern the Court of Appeals, including the method of filling vacancies on that court. Pursuant to KSA 20-3005, when there is a vacancy, the Commission will nominate and submit the names of three candidates to the Governor, who must then appoint one of these nominees within 60 days. Otherwise, the Chief Justice of the Supreme Court will make the appointment from among the persons nominated.

Supreme Court justices and Court of Appeals judges are subject to retention elections following their first full year in office and then every six years (Supreme Court) or four years (Court of Appeals) thereafter. The retention elections would continue under the proposed constitutional amendment.

Article 14, Section 1 of the *Kansas Constitution* allows for an amendment 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.

HCR 1601 was introduced by Senator Jeff King. In the Senate Judiciary Committee, the following conferees testified in support of the resolution: 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 testimony supporting the resolution.

Opponents of the resolution 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 various chambers of commerce submitted written testimony opposing the resolution.

The Senate Committee approved technical amendments to the resolution suggested by the Office of the Revisor. The Committee recommended the resolution be passed as amended.

The Senate Committee of the Whole amended the resolution to make several clarifications to the explanatory statement that would appear on the ballot. The Committee of the Whole recommended the resolution be passed as amended.