Session of 2022

Senate Concurrent Resolution No. 1621

By Committee on Federal and State Affairs

3-1

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

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

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

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

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

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

(4) Whenever a vacancy in the office of justice of the supreme
court exists at the time the appointment to fill such vacancy is made pursuant to this section, the appointment shall be effective at the time the appointment is made, but where an appointment is made pursuant to this section to fill a vacancy that will occur at a future date, such appointment shall not take effect until such date.

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

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

(2) Not less than sixty days prior to the holding of the general election next preceding the expiration of his term of office, any justice of the supreme court, the justice may file in the office of the secretary of state a declaration of candidacy for election to succeed himself retention in office. If a declaration is not so filed as provided in this section, the position held by such justice shall be open from the expiration of his term of office. If such declaration is filed, his name shall be submitted at the next general election to the electors of the state on a separate judicial ballot, without party
designation, reading substantially as follows:

"Shall ____________________________________________
(Here insert name of justice.)

___________________________________________________
(Here insert the title of the court.)

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

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

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

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

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

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

(4) If a majority of those voting on the question vote against
the justice's retention, the secretary of state, following the final
canvass of votes on the question, shall certify the results to the
clerk of the supreme court. Any such justice who has not been
retained in office pursuant to this section shall not be eligible for
appointment to the office of justice of the supreme court prior to
the expiration of six years after the expiration of the justice's term
of office.

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

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

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

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

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

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