

HCS HJR 49 -- APPELLATE JUDICIAL COMMISSION

SPONSOR: Jones, 89 (Cox)

COMMITTEE ACTION: Voted "do pass" by the Special Committee on General Laws by a vote of 5 to 3.

Upon voter approval, this proposed constitutional amendment increases from three to five the number of judicial candidates nominated by the Nonpartisan Judicial Commission for a vacancy in the office of judge of specified courts from which the Governor may make an appointment. The Governor may veto the first list of candidates provided by the commission within 60 days. If the panel of judicial candidates is vetoed, the commission must submit a second list of nominees. If the Governor fails to appoint any of the nominees from the second list within 60 days, the Lieutenant Governor must appoint a nominee from the second list. If the Lieutenant Governor does not appoint within 60 days, the commission will appoint a candidate from the second list of nominees to fill the vacancy.

The amendment changes the composition of nonpartisan judicial commissions. The seven members of the Appellate Judicial Commission will be chosen as follows:

- (1) Three members of the Missouri Bar, each a resident from a different court of appeals district;
- (2) Three citizens, not members of the Missouri Bar, each a resident from a different court of appeals district;
- (3) One citizen, not a member of the Missouri Bar, from anywhere in the state.

Each circuit judicial commission will consist of five members to be composed of two attorney members elected by the Missouri Bar members residing in the judicial circuit and three non-attorney members residing in the judicial circuit and appointed by the Governor. The terms of all members of the judicial commissions will be four years. Each appointment to the Appellate Judicial Commission and Circuit Judicial Commissions is subject to the advice and consent of the Senate within 30 legislative days of the appointment by the Governor.

The judicial selection process must favor openness and public access. All hearings, debates, and votes of the commissions must be open to the public and to the press with no less than 72 hours public notice given before each meeting. The list of applicants for any judicial vacancy must be open to the public with their names posted on the web site of the Missouri Supreme Court and

all information available to the respective commissions on the judicial candidates must be made available to the Governor. Every applicant nominated will be subject to a background check, including a criminal check, which will not be a public record, but available only to the commission and the Governor.

The amendment transfers the responsibility for the approval of expenses incurred in the administration of the judicial selection plan from the Missouri Supreme Court to the Commissioner of the Office of Administration.

FISCAL NOTE: No impact on state funds in FY 2009, FY 2010, and FY 2011.

PROPOSERS: Supporters say that the current nonpartisan plan, while state of the art and imitated at its inception, has become political in its deliberations and selections. Increasing the number of gubernatorial appointments to the commission increases the accountability of our elected officials. Currently, gubernatorial appointments make up only a minority of the commission. Three attorneys elected by the Missouri Bar and the Chief Justice of the Missouri Supreme Court make up four of the seven commission members. The majority of the commission is, therefore, not accountable to all Missouri citizens.

Testifying for the bill were Representative Cox; James Byrne; Missouri Eagle Forum; Samuel Hais; William Placke; Better Courts for Missouri; and Thomas Walsh.

OPPOSERS: Those who oppose the bill say that the nonpartisan judicial selection plan has served Missouri well with broad support from all segments of the legal community and business community. Increasing the gubernatorial appointments increases the political nature of what should be an independent and nonpartisan judiciary.

Testifying against the bill were Batya Abramson-Goldstein, Jewish Community Relations Council; David Atchenberg; John Bardgett; James Beck; Gregory Bentz; Karl Blanchard, Jr.; AARP Missouri State Office; Grant Davis, Missouri Association of Trial Attorneys; Doreen Dodson; Missouri National Education Association; Leonard Frankel; Greater Kansas City Chamber of Commerce; Missouri AFL-CIO; Missouri Federation of Teachers and School Related Personnel; Charles Harris, Jr., Missouri Bar Association; Carl Kraft; Kansas City Civic Council; Genevieve Nichols; James O'Loughlin, Orscheln Industries; Randa Rawlins, Shelter Insurance Companies; Missouri School Boards Association; Landon Rowland; Missouri Organization of Defense Lawyers; Howard Shalowitz; Missouri Catholic Conference; Lisa Wexelman, Missouri Institute for Justice; Fred Wilkins; and Wayne Withers, Emerson

Electric Company.

OTHERS: Others testifying on the bill provided a history of the court from 1992 to 2007 and the effect that the judicial selection by the Nonpartisan Court Plan has had on the court's judicial philosophy and actions.

Testifying on the bill were William George Eckhardt; and Malia Reddick, American Judicature Society.