

HCS HJR 10 -- APPELLATE JUDICIAL COMMISSION

SPONSOR: Jones, 89 (Cox)

COMMITTEE ACTION: Voted "do pass" by the Special Committee on General Laws by a vote of 9 to 4.

Upon voter approval, this proposed constitutional amendment increases from three to four 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. The Governor must choose a candidate from the second list within 45 days or the commission is authorized to appoint one of the nominees from the second list.

The substitute changes the composition of nonpartisan judicial commissions. There will be eight members of the Appellate Judicial Commission chosen as follows:

- (1) A justice of the Missouri Supreme Court and three members of the Missouri Bar, each a resident from a different court of appeals district, selected by the members of the Missouri Bar;
- (2) Three citizens who are not members of the bar and are each a resident from a different court of appeals district, appointed by the Governor; and
- (3) One citizen, from anywhere in the state, appointed by the Governor.

Each circuit judicial commission will consist of six members to be composed of the chief judge of the requisite district, two attorney members elected by the Missouri Bar members residing in the judicial circuit and three citizens residing in the judicial circuit and appointed by the Governor. The terms of all members, two of who must not be Missouri Bar 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 new citizen member of either the appellate or a circuit judicial commission may be chosen by the Governor on or after January 15, 2013. The term of all current judicial commissioners will expire upon the effective date of the substitute, and commissioners will be replaced according to the previously

described process.

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 substitute 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 2010, FY 2011, and FY 2012.

PROPONENTS: Supporters say that citizens should have greater impact in the judicial selection process. Many states have a modified version of the Missouri Plan to allow greater citizen involvement. Since the Governor is elected, he or she should have more input in the selection of commissioners. The Open Meetings and Records Law, commonly known as the Sunshine Law, should apply to the judicial selection process.

Testifying for the bill were Representative Cox; Americans for Prosperity and Foundation; Concerned Women for America of Missouri; Janet Englebach; and Greg Hoberock.

OPPONENTS: Those who oppose the bill say that the Missouri Supreme Court is not an activist court in need of change. Very few of its decisions split along party lines. There is great citizen support for the current Missouri Plan. Commissioners take their jobs seriously and do not act in a biased fashion when presenting candidates for judicial office. The requirement of Senate confirmation may bias the process of judicial selection in favor of the senators. Some closed records are necessary to ensure that the best candidates apply for judicial office.

Testifying against the bill were Douglas E. Abrams and Larry Dessem, University of Missouri School of Law; David Octenberg, University of Missouri-Kansas City School of Law; Missouri Bar; Randa Rawlins, Shelter Insurance; American Civil Liberties Union of Eastern Missouri; Missouri National Education Association; Missouri School Boards Association; League of Women Voters of

Missouri; Missouri AARP; Missouri Association of Trial Attorneys; Missouri Organization of Defense Lawyers; Missouri Association of Criminal Defense Lawyers; Justice Institute for Missouri; Greater Kansas City Chamber of Commerce; Jerry Carmody; Kansas City Civic Council; James O'Loughlin, Orscheln Industries; Landon Rowland; and Lawrence Weber.

OTHERS: Others testifying on the bill say that the Missouri Plan is not perfect and should be discussed and reviewed. The commission should be accountable to lay persons. The selection process should be transparent. Judges should not be on the commission.

Testifying on the bill was William George Eckhardt, University of Missouri-Kansas City School of Law.