

SECOND REGULAR SESSION

# HOUSE JOINT RESOLUTION NO. 66

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES WALTON (Sponsor), LEMBKE, NASHEED,  
HAYWOOD AND JOHNSON (Co-sponsors).

Read 1st time February 7, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

3326L.011

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### JOINT RESOLUTION

Submitting to the qualified voters of Missouri an amendment repealing sections 19, 21, 24, 25(a), 25(b), 25(c)(1), and 25(d) of article V of the Constitution of Missouri, and adopting ten new sections in lieu thereof relating to the judiciary.

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*Be it resolved by the House of Representatives, the Senate concurring therein:*

That at the next general election to be held in the state of Missouri, on Tuesday next following the first Monday in November, 2008, or at a special election to be called by the governor for that purpose, there is hereby submitted to the qualified voters of this state, for adoption or rejection, the following amendment to article V of the Constitution of the state of Missouri:

Section A. Sections 19, 21, 24, 25(a), 25(b), 25(c)(1), and 25(d), article V, Constitution of Missouri, are repealed and ten new sections adopted in lieu thereof, to be known as sections 19, 21, 24, 25(a), 25(b)(1), 25(b)(2), 25(b)(3), 25(b)(4), 25(c)(1), and 25(d), to read as follows:

Section 19. Judges of the supreme court [and] **shall be selected for terms of ten years**, of the court of appeals [shall be selected] for terms of [twelve] **eight** years, judges of the circuit courts for terms of six years, and associate circuit judges for terms of four years.

Section 21. **At the time of their appointment, judges of the state of Missouri shall have the qualifications set forth in this section.** Judges of the supreme court [and of the] , court of appeals, **circuit, and associate circuit courts** shall have been citizens of the United States for at least fifteen years, and qualified voters of the state for nine years next preceding

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

5 their selection. Such judges shall be at least [thirty] **forty** years of age. Except as provided by  
6 section 6, judges of the court of appeals shall be residents of the court of appeals district in which  
7 they serve[.], circuit judges **and associate circuit** shall have been [citizens of the United States  
8 for at least ten years, and qualified voters of this state three years next preceding their selection,  
9 and be not less than thirty years of age and] residents of the circuit for at least one year[.  
10 Associate circuit judges shall be qualified voters of this state and residents of the county, at least  
11 twenty-five years old,] and have such other qualifications as may be provided by law. Every  
12 supreme, appellate, circuit, and associate circuit court judge shall be licensed to practice law in  
13 this state **for at least ten years and have had experience as a trial attorney for at least five**  
14 **years. Any judge removing his or her residency from that jurisdiction shall forfeit his or**  
15 **her office.**

Section 24. 1. There shall be a commission on retirement, removal, and discipline,  
2 composed of two citizens who are not members of the bar, appointed by the governor, [two  
3 lawyers] **one member of the bar of this state** appointed by the [board of governors of The  
4 Missouri Bar] **governor**, one judge [of the court of appeals to be selected by a majority of the  
5 judges of the court of appeals, and one judge of the circuit courts to be selected by a majority of  
6 the circuit judges of this state] **appointed by the chief justice of the supreme court, one citizen**  
7 **who is not a member of the bar appointed by the president pro tem of the senate, and one**  
8 **citizen who is not a member of the bar appointed by the speaker of the house of**  
9 **representatives.** The commission shall receive and investigate all requests and suggestions for  
10 retirement for disability, and all complaints concerning misconduct of all judges, members of the  
11 judicial commissions, and of this commission. No member of the commission shall participate  
12 in any matter in which he **or she** has a personal interest. If a member is disqualified to  
13 participate in any matter before the commission, the respective selecting authority shall select  
14 a substitute to sit during such disqualification. Of the members first appointed, [each] **one of the**  
15 **citizen members appointed by the governor shall be appointed for a term of one year, one**  
16 of the citizen members **appointed by the governor** shall be appointed for a term of two years  
17 [and each of], the lawyer [members] **member** for a term of [four] **three** years, [and each of] the  
18 judge [members] **member** for a term of [six] **four** years, **the citizen member appointed by the**  
19 **president pro tem of the senate for a term of five years, and the citizen member appointed**  
20 **by the speaker of the house of representatives for a term of six years;** and thereafter members  
21 shall be appointed for a term of six years.

22 2. Upon [recommendation by] an affirmative vote of at least four members of the  
23 commission, the [supreme court en banc] **commission** shall retire from office any judge or any  
24 member of any judicial commission or any member of this commission who is found to be  
25 unable to discharge the duties of his office with efficiency because of permanent sickness or

26 physical or mental infirmity. A judge, except a municipal judge so retired shall receive one-half  
27 of his regular compensation during the remainder of his term of office. Where a judge subject  
28 to retirement under other provisions of law, has been retired under the provisions of this section,  
29 the time during which he was retired for disability under this section shall count as time served  
30 for purposes of retirement under other provisions of this constitution or of law.

31 3. Upon [recommendation by] an affirmative vote of at least four members of the  
32 commission, the [supreme court en banc, upon concurring with such recommendation,]  
33 **commission** shall remove, suspend, discipline or reprimand any judge of any court or any  
34 member of any judicial commission or of this commission, for the commission of a crime, or for  
35 misconduct, habitual drunkenness, willful neglect of duty, corruption in office, incompetency  
36 or any offense involving moral turpitude, or oppression in office. No action taken under this  
37 section shall be a bar to or prevent any other action authorized by law.

38 4. A judge is disqualified from acting as a judicial officer while there is pending an  
39 indictment or information charging him **or her** in any court in the United States with a crime  
40 punishable as a felony under the laws of Missouri or the United States, or a recommendation [to  
41 the supreme court] by the commission for his **or her** removal, or retirement, or after articles of  
42 impeachment have been voted by the house of representatives. A judge so disqualified shall  
43 continue to receive his **or her** salary **until removed or retired**.

44 5. On [recommendation] **a majority vote** of the **members of the** commission, the  
45 [supreme court] **commission** shall suspend a judge from office without salary when in any court  
46 in the United States he **or she** pleads guilty or no contest to, or is found guilty of, an offense  
47 punishable as a felony under the laws of Missouri or the United States, or of any other offense  
48 that involves moral turpitude. If he **or she** is suspended and [his] **the** conviction becomes final  
49 the [supreme court] **commission** shall remove [him] **the judge** from office. If his **or her**  
50 conviction is reversed and he **or she** is discharged from that charge by order of court or of the  
51 prosecuting officer, whether without further trial or after further trial and a finding of not guilty,  
52 [his] **the** suspension terminates and he **or she** shall be paid his **or her** salary for the period of  
53 suspension.

54 6. Recommendations [to the supreme court] by the commission shall be made only after  
55 notice and hearing. Rules for the administration of this section and for the procedures thereunder  
56 shall be prescribed by [supreme court rule] **the commission** unless otherwise provided by law.

57 7. Members of the commission shall be reimbursed for their actual and necessary  
58 expenses incurred in the performance of their duties.

59 8. Additional duties shall not be imposed by law or supreme court rule upon the  
60 commission on retirement, removal and discipline.

Section 25(a). **Until such time as the method of selection of judges shall be changed by a vote of the people as provided under section 25(b) of this article**, whenever a vacancy shall occur in the office of judge of any of the following courts of this state, to wit: The supreme court, the court of appeals, or in the office of circuit or associate circuit judge within the city of St. Louis and Jackson County **and within such jurisdictions in which judges are appointed by the governor after nomination by a nonpartisan judicial commission under section 25(b) of this article**, the governor shall fill such vacancy by appointing one of three persons possessing the qualifications for such office, who shall be nominated and whose names shall be submitted to the governor by a nonpartisan judicial commission established and organized as hereinafter provided. If the governor fails to appoint any of the nominees within sixty days after the list of nominees is submitted, the nonpartisan judicial commission making the nomination shall appoint one of the nominees to fill the vacancy.

Section 25(b)(1). At any general election the qualified voters of any judicial circuit [outside of the city of St. Louis and Jackson County], may by a majority of those voting on the question elect to have the circuit and associate circuit judges appointed by the governor in the manner provided for the appointment of judges to the courts designated in section 25(a), or, [outside the city of St. Louis and Jackson County,] to discontinue any such plan **or to elect their judges on either a nonpartisan or partisan ballot or to provide for direct appointment of their judges by the governor upon advice and consent of the senate**. The question of [whether] **the method of selection of** the circuit and associate circuit judges of any such circuit [shall be so appointed] shall be submitted to the voters of each county in any circuit at the next general election whenever petitions therefor signed by ten percent of the legal voters of each county in the circuit voting for the office of governor at the last election thereof are filed in the office of secretary of state at least 90 days before such election. The question shall be presented as follows: ["Shall the circuit and associate circuit judges of the ..... judicial circuit be selected as provided in Section 25 of Article V of the Missouri Constitution?

YES  NO

(Mark One)"]

**"Please vote for one of the following methods for selection of judges of the ..... judicial circuit:**

**The circuit and associate circuit judges in the judicial circuit shall be elected to office on a nonpartisan ballot as provided by law.**

**The circuit and associate circuit judges in the ..... judicial circuit shall be elected to office on a partisan ballot as provided by law.**

**The circuit and associate circuit judges in the ..... judicial circuit shall be appointed by the governor upon advice and consent of the senate.**

25  **The circuit and associate circuit judges in the ..... judicial circuit shall be**  
26 **appointed by the governor after nomination by a commission.**

27 **(Place an "X" in one square.)"**

28

29 The provisions of law with respect to initiative petitions shall apply insofar as applicable relative  
30 to the certification of the petitions to local officials by the secretary of state, the preparation,  
31 printing, publishing and distribution of the judicial ballots required by this section, the holding  
32 and conduct of the election, and the counting, canvassing, return, certification, and proclamation  
33 of the votes. [If a majority of the votes upon the question are cast in favor of the adoption in  
34 each county comprising the circuit, the nonpartisan selection of the circuit and associate judges  
35 shall be adopted in the circuit.] The question of selection of circuit and associate circuit judges  
36 in the manner provided in section 25(a) shall not be submitted **by initiative petition** more often  
37 than once every four years. [If any judicial circuit adopts the nonpartisan selection of the circuit  
38 and associate circuit judges under the provisions of this section, the question of its  
39 discontinuance shall not be submitted more often than once every four years and may be  
40 submitted at any general election and shall be proceeded upon insofar as may be applicable in  
41 like manner as prescribed in this section for the original adoption of the plan.]

42 The petition shall be in substantially the following form:

43 To the Honorable Officials in general charge of elections for the county of ..... for the  
44 state of Missouri:

45 We, the undersigned, legal voters of the state of Missouri, and of the county of .....,  
46 respectfully demand that the question of the [discontinuance] **method** of [the nonpartisan]  
47 selection of the circuit and associate circuit judges be submitted to the legal voters of the .....  
48 judicial circuit, for their approval [or rejection,] at the general election to be held on the .....  
49 day of ....., A.D. [19] **20...**

50 **In addition to the above provisions for initiative petitions, in any circuit in which**  
51 **the circuit and associate circuit judges are currently appointed by the governor after**  
52 **nomination by a nonpartisan judicial commission on the effective date of this section, the**  
53 **question on the method of selection of judges shall be put to the voters at the next general**  
54 **election following the adoption of this section and every ten years thereafter.**

55 The ballot shall provide as follows:

56 ["Shall the nonpartisan appointment by the governor of the circuit and associate circuit  
57 judges be discontinued in the ..... judicial circuit?

58  YES  NO]

59 **"Please vote for one of the following methods for selection of judges of the .....**  
60 **judicial circuit:**

61  The circuit and associate circuit judges in the ..... judicial circuit shall be elected  
62 to office on a nonpartisan ballot as provided by law.

63  The circuit and associate circuit judges in the ..... judicial circuit shall be elected  
64 to office on a partisan ballot as provided by law.

65  The circuit and associate circuit judges in the ..... judicial circuit shall be  
66 appointed by the governor upon advice and consent of the senate.

67  The circuit and associate circuit judges in the ..... judicial circuit shall be  
68 appointed by the governor after nomination by a commission.

69 (Place an "X" in one square.)"

70 [If a majority of the votes upon the question are cast in favor of such discontinuance in  
71 each county comprising the circuit, the nonpartisan selection of the circuit and associate circuit  
72 judges shall be discontinued in such judicial circuit.

73 If the nonpartisan selection of the judges be discontinued in any such judicial circuit,  
74 other than the city of St. Louis and Jackson County, the selection of such judges therein shall be  
75 made as otherwise prescribed by law.] **The question shall be decided by a majority of the**  
76 **votes cast. In the event that none of the methods of selection receive a majority of the votes**  
77 **cast, there shall be a runoff election within thirty days after the election, and the top two**  
78 **methods of selection of judges that received the highest number of votes cast shall be put**  
79 **to the voters for a vote at said runoff election, and the judges for the circuit shall be**  
80 **selected in accordance with the majority of the votes cast. This section shall be**  
81 self-enforcing.

**Section 25(b)(2). At the next general election following the adoption of this section**  
2 **and every ten years thereafter, the qualified voters of the appellate districts of the state**  
3 **may determine the method of selection of judges of the appellate court.**

4 **The ballot shall provide as follows:**

5 **"Please vote for one of the following methods for selection of judges of the .....  
6 appellate district.**

7  The appellate judges in the ..... appellate district shall be elected to office on a  
8 nonpartisan ballot as provided by law.

9  The appellate judges in the ..... appellate district shall be elected to office on a  
10 partisan ballot as provided by law.

11  The appellate judges in the ..... appellate district shall be appointed by the  
12 governor upon advice and consent of the senate.

13  The appellate judges in the ..... appellate district shall be appointed by the  
14 governor after nomination by a nonpartisan judicial commission.

15           **The question shall be decided by a majority of the votes cast. In the event that none**  
16 **of the methods of selection receive a majority of the votes cast, there shall be a runoff**  
17 **election within thirty days after the election, and the top two methods of selection of judges**  
18 **that received the highest number of votes cast shall be put to the voters for a vote at said**  
19 **runoff election, and the judges for the district shall be selected in accordance with the**  
20 **majority of the votes cast. This section shall be self-enforcing.**

**Section 25(b)(3). At the next general election following the adoption of this section**  
2 **and every ten years thereafter, the qualified voters of the state may by a majority of those**  
3 **voting on the question determine the method of selection of supreme court judges.**

4           **The ballot shall provide as follows:**

5           **"Please vote for one of the following methods for selection of judges of the supreme**  
6 **court:**

7            **The judges of the supreme court shall be elected to office on a nonpartisan ballot**  
8 **as provided by law.**

9            **The judges of the supreme court shall be elected to office on a partisan ballot as**  
10 **provided by law.**

11            **The judges of the supreme court shall be appointed by the governor upon advice**  
12 **and consent of the senate.**

13            **The judges of the supreme court shall be appointed by the governor after**  
14 **nomination by a nonpartisan judicial commission.**

15           **The question shall be decided by a majority of the votes cast. In the event that none**  
16 **of the methods of selection receive a majority of the votes cast, there shall be a runoff**  
17 **election within thirty days after the election, and the top two methods of selection of judges**  
18 **that received the highest number of votes cast shall be put to the voters for a vote at said**  
19 **runoff election, and the judges of the supreme court shall be selected in accordance with**  
20 **the majority of the votes cast. This section shall be self-enforcing.**

          Section 25(c)(1). Each judge [appointed] **selected** pursuant to the provisions of sections  
2 25(a)-(g) shall hold office for a term ending December thirty-first following the next general  
3 election after the expiration of twelve months in the office. Any judge holding office, or elected  
4 thereto, at the time of the election by which the provisions of sections 25(a)-(g) become  
5 applicable to his office, shall, unless removed for cause, remain in office for the term to which  
6 he would have been entitled had the provisions of sections 25(a)-(g) not become applicable to  
7 his office. Not less than sixty days **prior to the period provided by law for filing declarations**  
8 **of candidacy for state office**, prior to the holding of the general election next preceding the  
9 expiration of his term of office, any judge whose office is subject to the provisions of sections  
10 25(a)-(g) may file in the office of the secretary of state a declaration of candidacy for election to

11 succeed himself. If a declaration is not so filed by any judge, the vacancy resulting from the  
 12 expiration of his term of office shall be filled by [appointment] **the method of selection of**  
 13 **judges in effect in the state, district, or circuit** as herein provided. If such declaration is filed,  
 14 his name shall be submitted at said next general election to the voters eligible to vote within the  
 15 state if his office is that of judge of the supreme court, or within the geographic jurisdiction limit  
 16 of the district where he serves if his office is that of a judge of the court of appeals, or within the  
 17 circuit if his office is that of circuit judge, or within the county if his office is that of associate  
 18 circuit judge on a separate judicial ballot, without party designation, reading:

19 "Shall Judge .....

20 (Here the name of the judge shall be inserted)

21 of the .....

22 (Here the title of the court shall be inserted)

23 be retained in office?

24  YES  NO

25 (Mark an "X" in the box you prefer.)"

26

27 If [a majority] **at least forty-one percent** of those voting on the question vote against retaining  
 28 [him] **the judge** in office, upon the expiration of his **or her** term of office, a vacancy shall exist  
 29 which shall be filled by [appointment] **the method of selection of judges in effect in the state,**  
 30 **district, or circuit** as provided [in section 25(a)] **herein**; otherwise, said judge shall, unless  
 31 removed for cause, remain in office for the number of years after December thirty-first following  
 32 such election as is provided for the full term of such office, and at the expiration of each such  
 33 term shall be eligible for retention in office by election in the manner here prescribed.

Section 25(d). Nonpartisan judicial commissions whose duty it shall be to nominate and  
 2 submit to the governor names of persons for appointment as provided by sections 25(a)-(g) are  
 3 hereby established and shall be organized on the following basis: For vacancies in the office of  
 4 judge of the supreme court [or of the court of appeals,] **appointed by the governor after**  
 5 **nomination by a nonpartisan judicial commission under the provisions of sections 25(a)-(g)**  
 6 **of this article** there shall be one such commission, to be known as "The [Appellate] **Supreme**  
 7 **Court Judicial Commission**"; **for vacancies in the office of judge of the court of appeals of**  
 8 **any appellate judicial district appointed by the governor after nomination by a**  
 9 **nonpartisan judicial commission under the provisions of sections 25(a)-(g) there shall be**  
 10 **one such commission, to be known as "The Appellate District Judicial Commission", for**  
 11 **each appellate judicial district which shall be subject to the provisions of sections 25(a)-(g);**  
 12 for vacancies in the office of circuit judge or associate circuit judge of any circuit court [subject  
 13 to] **appointed by the governor after nomination by a nonpartisan judicial commission**



14 **under** the provisions of sections 25(a)-(g) there shall be one such commission, to be known as  
15 "The ..... Circuit Judicial Commission", for each judicial circuit which shall be subject to the  
16 provisions of sections 25(a)-(g); the [appellate] **supreme court** judicial commission shall consist  
17 of [a] **the chief** judge of the supreme court [selected by the members of the supreme court], and  
18 the remaining members shall be chosen in the following manner: The [members of the bar of  
19 this state residing in each court of appeals district shall elect one of their number to serve as a  
20 member of said commission, and the] governor shall appoint, **with the advice and consent of**  
21 **the senate**, one citizen, not a member of the bar, **and one citizen who is a member of the bar**  
22 from among the residents of each court of appeals district, to serve as a member of said  
23 commission, and the members of the commission shall select one of their number to serve as  
24 [chairman] **chair. Each appellate judicial commission shall consist of five members, one of**  
25 **whom shall be the chief judge of the district of the court of appeals within which the**  
26 **appellate judicial district of such commission is situated and the remaining four members**  
27 **shall be chosen in the following manner: the appellate judicial district shall be subdivided**  
28 **into two subdistricts of equal population as is practical. The governor, with the advice and**  
29 **consent of the senate, shall appoint one citizen, not a member of the bar, and one citizen,**  
30 **who is a member of the bar, from among the residents of each of said subdistricts of an**  
31 **appellate judicial district to serve as members of the commission, and the members of the**  
32 **commission shall select one of their number to serve as chair.** Each circuit judicial  
33 commission shall consist of five members, one of whom shall be the chief judge of the [district  
34 of the court of appeals] **circuit** within which the judicial circuit of such commission[, or the  
35 major portion of the population of said circuit] is situated and the remaining four members shall  
36 be chosen in the following manner: the [members of the bar of this state residing in the judicial  
37 circuit of such commission shall elect two of their number to serve as members of said  
38 commission, and] **judicial circuit shall be subdivided into two subdistricts of equal**  
39 **population as is practical;** the governor, **upon advice and consent of the senate**, shall appoint  
40 [two citizens] **one citizen**, not [members] **a member** of the bar, **and one citizen who is a**  
41 **member of the bar**, from among the residents of **each of said subdistricts of** said judicial  
42 circuit to serve as members of said commission, the members of the commission shall select one  
43 of their number to serve as [chairman] **chair**; and the terms of office of the members of such  
44 commission shall be fixed by law, but no law shall increase or diminish the term of any member  
45 then in office. No member of any such commission other than a judge shall hold any public  
46 office, and no member shall hold any official position in a political party. Every such  
47 commission may act only by the concurrence of a majority of its members. The members of such  
48 commission shall receive no salary or other compensation for their services but they shall receive  
49 their necessary traveling and other expenses incurred while actually engaged in the discharge of

50 their official duties. **Within ninety days after the population of this state is reported to the**  
51 **President for each decennial census of the United States, the subdistricts provided for**  
52 **herein shall be reapportioned by the supreme court so that each subdistrict contains equal**  
53 **population as is practical. Except as otherwise provided by this article or by law, all such**  
54 commissions shall be administered, and all elections provided for under this section shall be held  
55 and regulated, under such rules as the supreme court shall promulgate, **consistent with the**  
56 **general election laws of the state.**

✓