

SECOND REGULAR SESSION

HOUSE JOINT RESOLUTION NO. 52

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES LEMBKE (Sponsor), RUESTMAN, PORTWOOD,
CUNNINGHAM (86), ICET, MUSCHANY, TILLEY, EMERY, BIVINS,
DUSENBERG AND NIEVES (Co-sponsors).

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D. ADAM CRUMBLISS, Chief Clerk

3600L.01I

JOINT RESOLUTION

Submitting to the qualified voters of Missouri an amendment repealing section 25(a) of article V of the Constitution of Missouri, and adopting one new section in lieu thereof relating to judicial appointments.

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Section A. Section 25(a), article V, Constitution of Missouri, is repealed and one new section adopted in lieu thereof, to be known as section 25(a), to read as follows:

Section 25(a). **1. This section shall be known as the Judicial Appointment Process for Missouri Appellate Courts, Circuit Courts of St. Louis City, St. Louis County, Clay County, Platte County and Jackson County and any other Circuit Courts whose Citizens Voluntarily Adopt the Provisions Below for Judicial Appointments.**

2. Recognizing the principle that all democratic government is formed on the basis of the consent of the governed citizens; that the citizens in a Republic provide consent to be governed in elections of the executive and legislative branches of government; that the

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.

8 balance between judicial independence and public accountable was conceived by the
9 Founders through executive nomination and legislative advice and consent; the furtherance
10 of democratic principles is achieved through providing citizens input into the selection of
11 members of the judiciary through their elected representatives as envisioned by the
12 Founders; the citizens adopt the judicial appointment provision below which in summary
13 promotes open government through public and press access to the process of appointing
14 judges; provides for a bi-partisan commission equally balanced in political factions which
15 commission chooses five qualified judicial applicants on the basis of merit for the office
16 from which the governor must pick one nominee; restores a proper democratic check on
17 the judiciary by the peoples' representatives in the senate confirming or rejecting such
18 nominee within a mandatory time period; provides protections from factions for the
19 nominee during senate confirmation; and promotes and encourages the timely and efficient
20 filling of judicial vacancies.

21 3. Now therefore, in the supreme court, the courts of appeal, or in the office of
22 circuit or associate circuit judge within the city of St. Louis, St. Louis County, Clay
23 County, Platte County and Jackson County, and such other counties as may voluntarily
24 adopt such method as provided for in this section, after January 1, 2009, judicial vacancies
25 shall be filled in the manner provided in this section.

26 4. (1) Whenever a vacancy shall occur in the office of judge of any of the following
27 courts of this state, to wit: The supreme court, the court of appeals, or in the office of circuit or
28 associate circuit judge within the city of St. Louis, St. Louis County, Clay County, Platte
29 County, and Jackson County, and such other counties as may voluntarily adopt such method
30 as provided for below, the governor shall fill such vacancy by appointing [one of three persons]
31 a person possessing the qualifications for such office, who shall be nominated and whose
32 [names] name shall be submitted to the governor by a [nonpartisan judicial commission] Bi-
33 Partisan Judicial Merit Selection Commission (the "Merit Commission" or "Commission")
34 established and organized as [hereinafter provided. If the governor fails to appoint any of the
35 nominees within sixty days after the list of nominees is submitted, the nonpartisan judicial
36 commission making the nomination shall appoint one of the nominees to fill the vacancy] set
37 forth in subsection 6 of this section.

38 (a) To ensure a fully functioning judiciary for the resolution of disputes and the
39 speedy and proper application of justice, it shall be the public policy of this state to fill
40 judicial vacancies as expeditiously as possible. To that end, the process hereinafter
41 described shall begin no later than the occurrence of a vacancy.

42 a. Where possible the process to fill a vacancy shall commence one hundred twenty
43 days in advance of a vacancy due to mandatory retirement and such appointment shall

44 occur no sooner than the day succeeding the effective retirement. The process may begin
45 within one hundred twenty days of an announced retirement; provided however, that no
46 such vacancy shall be filled within twenty days before or ninety days after a state-wide
47 election.

48 **b. To promote efficiency, the merit selection commission, governor, and senate may**
49 **consider more than one vacancy at a time for the circuit courts. Any process to fill any**
50 **vacancy on the courts of appeal may consider a maximum of one vacancy per district at a**
51 **time. Any process to fill a vacancy of the supreme court shall be conducted on its own.**

52 **(2) (a) Upon the occurrence of a vacancy, or in anticipation of a vacancy, as set**
53 **forth above, the chair of the merit selection commission shall notify the governor of the**
54 **occurrence, or expected occurrence, of the vacancy and a call for applicants shall be**
55 **publicly noticed with a closing deadline of thirty days after the public notice of the call for**
56 **applicants with a list of questions to be completed by the applicants.**

57 **(b) The list of applicants, the questions submitted, and the answers thereto shall be**
58 **made public through a posting on a web site and made available through the office of the**
59 **commission.**

60 **(3) (a) Following the public notice, and in accordance with administrative rules**
61 **and procedures adopted by it and not superseded or modified by the general assembly or**
62 **contrary to the minimum requirements for public disclosure set forth herein, the merit**
63 **selection commission shall within thirty days publicly announce and submit to the governor**
64 **a list of five qualified persons from all applicants to fill such vacancy.**

65 **(b) The merit selection commission shall meet in public.**

66 **(c) The commission shall conduct interviews in public or private according to its**
67 **own rules, such rules being applied equally to all applicants.**

68 **(d) The merit selection commission shall not be obligated to conduct in public its**
69 **internal deliberations and discussions over which of the final five qualified persons shall**
70 **be submitted to the governor.**

71 **(e) If the merit selection commission or any commissioner, whether formally or**
72 **informally, discusses the qualifications with any person, entity or organization, not a**
73 **current applicant or a member of the merit selection commission, then the fact of the**
74 **communication and the substance of the communication shall be made part of the public**
75 **record.**

76 **(4) (a) The governor must choose one qualified person from the list as the**
77 **governor's nominee.**

78 **(b) The governor may make such further inquiry of any applicant as the governor**
79 **deems suitable.**

80 (c) The commission shall submit all written and other materials to the governor as
81 requested and in order to avoid duplication of efforts.

82 (d) The governor shall make such selection within thirty days of having received
83 the list of five qualified persons from the merit selection commission.

84 a. In the event the governor fails to make a selection within thirty days, the
85 lieutenant governor shall make such selection within twenty days after the period of time
86 for the governor to have failed to make a selection. If the lieutenant governor fails to make
87 such selection within twenty days, then the attorney general shall make such selection
88 within twenty days of the lieutenant governor having failed to make such selection. In such
89 circumstances the lieutenant governor and attorney general shall be entitled to all
90 information available to the governor.

91 (5) (a) The single nominee shall be subject to the consent of a majority of all the
92 members elected to the senate.

93 (b) The full senate shall vote to confirm or not confirm the nominee for the
94 appointment within sixty days of having received the nomination from the governor, or as
95 otherwise as set forth in subparagraph a. of paragraph (d) of subdivision (4) of this
96 subsection.

97 (6) (a) Recommendations by the Missouri Bar, as provided in subsection 2 of this
98 section, may be considered by the senate.

99 (b) The senate may hold public hearings relating to the qualifications of the
100 nominee.

101 (c) The senate and counsel to the nominee shall have the power to subpoena any
102 person or persons who have provided information during the application process which
103 has a direct bearing on the nominee's fitness, merit, or suitability for the judicial position.
104 That person shall testify under oath subject to civil and/or judicial penalties for perjury
105 as set forth in subdivision (2) of subsection 7 of this section and shall be subject to cross-
106 examination by any senator and counsel to the nominee. All persons testifying under oath
107 shall be entitled to be represented by counsel.

108 (d) The senate may designate a committee to conduct the hearings on the
109 qualifications, and such committee shall consist of an equal number of persons from the
110 majority and minority parties with an additional member, serving as the chair, from the
111 party that holds the majority in the senate at the time of the hearing.

112 (e) Any committee so appointed shall be purely advisory and not be entitled to vote
113 on whether to confirm the governor's nominee, but may make a recommendation to the
114 senate.

115 (f) Only the senate shall have the capacity to vote whether to confirm the nominee.

116 (g) All hearings, proceedings, and voting shall be on the full public record and open
117 to the press.

118 (h) If a vacancy shall occur for any reason, at a time when the senate shall not be
119 in session, the governor shall within sixty days after the list of five qualified persons being
120 forwarded to the governor, convene the senate for the purpose of confirming his or her
121 appointment to fill the vacancy and, if efficient, the transaction of such other business as
122 may come before it. The senate shall vote to confirm or not confirm such nominee within
123 thirty days of convening as set forth under this paragraph.

124 (i) If the senate votes not to confirm the governor's nominee, then the governor may
125 direct the commission to begin the process anew beginning with the call for applicants.

126 (7) (a) It shall be the public policy of the state to ensure public access to the process
127 of, and the actual appointment of, judges to public office. It shall be a public record
128 available through a request to the merit selection commission and posted on at least a
129 publicly accessible web site the list of applicants for any judicial vacancy. Additionally, a
130 list of questions to each applicant shall be publicly available together with the responses
131 to them.

132 (b) All information available to the commission in its proceedings shall be made
133 available to the governor and the senate.

134 (c) All hearings, debates and votes of the commission and of the senate, or
135 committee designated thereby, shall be open to the public and such meetings shall be on
136 no less than seventy-two hours public notice.

137 (d) Each applicant who makes a list submitted by the commission shall be subject
138 to a background check, including a criminal check, which shall not be a public record but
139 shall be available to the commission, the governor, and to the senate as confidential
140 information. The lack of publication of the background check shall not prevent any
141 questions in a public forum including the senate or committee hearings concerning issues
142 of criminal conduct or behavior.

143 (e) Sessions or communications not open to the public shall only be permitted to
144 those areas relating to the interviews by the commission, internal deliberations of the
145 commission concerning the final list of five qualified persons to the governor, matters of
146 national security or allegations, not convictions, of criminal or morally reprehensible
147 behavior.

148 5. (1) Within twenty-one days of public notice of the governor's nominee sent to
149 the senate, a recommendation by a committee of the Missouri Bar may be made as to the
150 fitness of a particular candidate.

(2) The committee of the Missouri Bar shall be composed of the president of the Missouri Bar and three members designated by the board of governors of the Missouri Bar from three different regions of the state. Such designees may be appointed or elected by and in such manner as the Missouri Bar deems appropriate.

(3) Any such recommendation submitted by the Missouri Bar committee shall be classified as one of the following: exceptionally qualified; qualified; no opinion; or not qualified. Any recommendation of not qualified shall be accompanied with supporting evidence. Bar committee members may be requested by the senate to testify under oath as to the committee's recommendation.

(4) Any person supplying information to the committee shall do so under oath and may be called to testify before the committee or the senate under oath, subject to representation by counsel.

6. (1) A ten-member Bi-Partisan Merit Selection Commission ("Commission") shall be established for the supreme court, for each court of appeals, and for any circuit court which appoints judges according to the provisions of this section.

(2) Each commission shall be comprised of:

(a) Two members of the Missouri Bar appointed by the governor, each from different political parties represented as the majority and the minority in the house of representatives;

(b) Two persons who are not members of the Missouri Bar appointed by the governor, each from different political parties represented as the majority and the minority in the house of representatives;

(c) One person appointed by the speaker of the house of representatives;

(d) One person appointed by the minority leader of the house of representatives;

(e) One person appointed by the president pro tempore of the senate;

(f) One person appointed by the minority leader of the senate; and

(g) Two members of the Missouri Bar appointed by the attorney general, each from different political parties represented as the majority and the minority in the house of representatives.

(3) All members of the commission shall serve two-year terms at the pleasure of the official who appointed the member and may be reappointed but not in excess of three terms.

(4) No person appointed to serve on a commission shall be replaced by the appointing official except during a thirty-day period beginning with the new legislative session in January of each year.

186 (5) No member of the commission shall hold elective office during the member's
187 term on the commission.

188 (6) Members of the commission shall receive no compensation but shall be
189 reimbursed for customary and usual expenses directly incurred in the performance of their
190 duties.

191 (7) The commission shall designate one of its members to serve as chair.

192 (8) The commission shall adopt and make public, procedures, and standards for
193 the conduct of its affairs, not inconsistent with the minimum public disclosure
194 requirements set forth herein and except as otherwise enacted by the general assembly.

195 (9) Except as otherwise provided, the commission shall act by majority vote. Any
196 tie vote shall require further deliberation.

197 7. (1) As used in this section, the term "person" means any natural person,
198 corporation, association, partnership, public or private institution, or other legal entity.

199 (2) Any person who knowingly and willfully commits, aids or abets, perjury during
200 or directly related to the judicial appointment process set forth in this section commits a
201 crime and shall be punished by imprisonment for a period of up to one year or by the
202 imposition of a fine of up to one hundred thousand dollars, or by both. A civil action may
203 be brought against any person who knowingly and willfully commits perjury during or
204 directly related to the judicial appointment process and the state in such action shall be
205 entitled to a judgment recovering a civil penalty of up to fifty thousand dollars per
206 violation. The attorney general, an applicant, or nominee shall have the exclusive right to
207 bring a civil action for such violation. Venue for such action shall be the county in which
208 the alleged violation occurred.

209 (3) No person who served on a commission, in a state-wide elected office or as a
210 member of the general assembly, may apply for any judicial vacancy for a period at least
211 one year succeeding his or her last day in service on the commission or as an elected
212 official. No spouse, brother, sister, or child of any person serving on a commission may
213 apply for any judicial vacancy during and for one year after the expiration of the term of
214 the commissioner.

215 (4) The office of a commissioner serving on the appellate judicial commission and
216 each of the circuit court commissions shall expire as of January 1, 2009. Any commissioner
217 not a judge shall be eligible for appointment to the commission constituted under this
218 article.

219 (5) The provisions of this section and of all state and local laws, regulations, rules,
220 charters, ordinances, and other governmental actions shall be construed in favor of the
221 open and public process of appointing members of the judiciary to an office in the third

222 co-equal branch of government. No state or local law, regulation, rule, charter, ordinance,
223 or other governmental action shall prevent, restrict, obstruct, or discourage any public or
224 press access to the judicial appointment process except as specifically permitted by this
225 section to be conducted without public access, or create disincentives for any member of
226 the public or press to have access to the process for judicial appointment, subject to rules
227 of orderly conduct of meetings.

228 (6) The general assembly shall be entitled to make such rules, laws, and regulations
229 in furtherance of the public policy and other provisions herein in accordance with its
230 procedures therefore.

231 (7) The provisions of this section are self-executing. All of the provisions of this
232 section are severable. If any provision of this section is found by a court of competent
233 jurisdiction to be unconstitutional or unconstitutionally enacted, the remaining provisions
234 of this section shall be and remain valid.

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