

SECOND REGULAR SESSION

HOUSE JOINT RESOLUTION NO. 51

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LEMBKE.

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D. ADAM CRUMBLISS, Chief Clerk

4060L.01I

JOINT RESOLUTION

Submitting to the qualified voters of Missouri an amendment repealing sections 24 and 27 of article V of the Constitution of Missouri, and adopting one new section in lieu thereof relating to the commission on retirement, removal, and discipline.

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Section A. Sections 24 and 27, article V, Constitution of Missouri, are repealed and one new section adopted in lieu thereof, to be known as section 27, to read as follows:

[Section 24. 1. There shall be a commission on retirement, removal, and discipline, composed of two citizens who are not members of the bar, appointed by the governor, two lawyers appointed by the board of governors of The Missouri Bar, one judge of the court of appeals to be selected by a majority of the judges of the court of appeals, and one judge of the circuit courts to be selected by a majority of the circuit judges of this state. The commission shall receive and investigate all requests and suggestions for retirement for disability, and all complaints concerning misconduct of all judges, members of the judicial commissions, and of this commission. No member of the commission shall participate in any matter in which he has a personal interest. If a member is disqualified to participate in any matter before the commission, the respective

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.

selecting authority shall select a substitute to sit during such disqualification. Of the members first appointed, each of the citizen members shall be appointed for a term of two years and each of the lawyer members for a term of four years, and each of the judge members for a term of six years; and thereafter members shall be appointed for a term of six years.

2. Upon recommendation by an affirmative vote of at least four members of the commission, the supreme court en banc shall retire from office any judge or any member of any judicial commission or any member of this commission who is found to be unable to discharge the duties of his office with efficiency because of permanent sickness or physical or mental infirmity. A judge, except a municipal judge so retired shall receive one-half of his regular compensation during the remainder of his term of office. Where a judge subject to retirement under other provisions of law, has been retired under the provisions of this section, the time during which he was retired for disability under this section shall count as time served for purposes of retirement under other provisions of this constitution or of law.

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

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

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

6. Recommendations to the supreme court by the commission shall be made only after notice and hearing. Rules for the administration of this section

55 and for the procedures thereunder shall be prescribed by supreme court rule
56 unless otherwise provided by law.

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

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

Section 27. Except as otherwise provided in this article, the effective date of this article
2 shall be January 2, 1979.

3 1. All judges elected in 1978 shall be sworn into office on January 1, 1979.

4 2. All magistrate courts, probate courts, courts of common pleas, the St. Louis court of
5 criminal correction, and municipal corporation courts shall continue to exist until the effective
6 date of this article at which time said courts shall cease to exist. When such courts cease to exist:

7 a. The jurisdiction of magistrate courts shall be transferred to the circuit court of the
8 circuit and such courts shall become divisions of the circuit court.

9 b. The jurisdiction of probate courts within the circuit shall be transferred to the circuit
10 court and such courts shall become divisions of the circuit court.

11 c. The jurisdiction of St. Louis court of criminal correction and all courts of common
12 pleas shall be transferred to the circuit court for the respective circuit and such courts shall
13 become divisions of the circuit court. The provisions of law relating to practice and procedure
14 of the courts of common pleas shall, until otherwise changed by law, remain in effect and the
15 provision of law relating to practice, procedure, venue, jurisdiction, selection of jurors, election
16 of clerk and provisions for deputies and all other provisions of law relating to the Hannibal Court
17 of Common Pleas shall until otherwise changed by law, remain in effect as to such division of
18 the Marion county circuit court and said division shall be known as division number 2 of the
19 Marion county circuit court instead of the Hannibal Court of Common Pleas.

20 d. The jurisdiction of municipal courts shall be transferred to the circuit court of the
21 circuit in which such municipality or major geographical area thereof shall be located and, such
22 courts shall become divisions of the circuit court. When such courts cease to exist, all records,
23 papers and files shall be transferred to the circuit court which may designate the place where
24 such records may be maintained.

25 e. Divisions of the circuit court created by this subsection may be changed hereafter by
26 law.

27 f. After the effective date of this article, in counties with a population of over thirty
28 thousand and less than sixty-five thousand, the office expenses and salaries of associate circuit
29 judges and their clerks who before the effective date of this article were probate judges shall
30 continue to be paid by the counties.

31 g. After the effective date of this article, in all counties with a population of over
32 sixty-five thousand and in any city not within a county, the office expenses and salaries of the
33 circuit judges who before the effective date of this article were probate judges in said counties
34 or city, shall be paid by the respective counties or city.

35 3. Until otherwise provided by law associate circuit judges shall hear all cases or matters,
36 civil and criminal, as now provided by law for magistrates within the county and such additional
37 cases or classes of cases as may be provided by law. Until otherwise provided by law, associate
38 circuit judges shall hear all cases or matters as now provided by law for probate courts within
39 the county, except that in the city of St. Louis, in all first class counties, and all second class
40 counties with a population of over sixty-five thousand, the circuit judge of the probate division
41 of the circuit court shall hear all cases and matters as now provided by law for probate courts
42 within such circuits or counties. An associate circuit judge exercising probate jurisdiction shall,
43 in connection therewith, possess general equitable powers. Associate circuit judges of the city
44 of St. Louis shall hear all civil and criminal cases as now provided by law for magistrates and
45 the St. Louis court of criminal correction including appeals and preliminary hearings in felony
46 cases and such additional cases or classes of cases as may hereafter be provided by law. Until
47 otherwise provided by law or supreme court rule the practice, procedure, filing fees and
48 administration of causes heard by associate circuit judges within the jurisdiction of former
49 magistrate and probate courts shall be and remain the same as in the court abolished.

50 4. a. In 1978, all probate judges except those selected under the nonpartisan selection
51 of judges plan shall be elected as provided by law. On the effective date of this article the
52 probate judge of the city of St. Louis and the probate judges of all first class counties and all
53 second class counties with a population of over sixty-five thousand shall become circuit judges
54 of their respective circuits and thereafter shall be selected or elected from the circuit as in the
55 case of other circuit judges and be entitled to the same compensation as provided by law for
56 circuit judges at the time of the effective date of this article until changed by law, and shall have
57 the same powers and jurisdiction as judges of the circuit court. Each judge who served as probate
58 judge and who is in office on the effective date of this article in such city and counties shall
59 continue to serve in the capacity of judge of the probate division of the circuit court until his
60 successor is selected and qualified, provided that with his consent any circuit or associate circuit
61 judge in the circuit at his request may hear, try and dispose of any matter, case or classes of cases
62 assigned to him by such judge of the probate division, and such judge of the probate division
63 with his consent, may hear, try and determine any case within the jurisdiction of the circuit court.
64 On the effective date of this article the probate judges of counties with a population of sixty-five
65 thousand or less shall become associate circuit judges of their respective circuits and thereafter
66 shall be selected or elected from the county as in the case of other associate circuit judges and

67 shall be entitled to the same compensation as that to which they were entitled on the effective
68 date of this article until changed by law.

69 b. On the effective date of this article, judges of the St. Louis court of criminal correction
70 and judges of the courts of common pleas shall become circuit judges and be entitled to the
71 compensation of circuit judges and shall have the same power and jurisdiction as circuit judges.

72 c. In 1978, all magistrates shall be elected as provided by law. On the effective date of
73 this article all magistrates who are then in office shall become associate circuit judges and shall
74 serve out the remainder of their terms as such. Each such judge shall be entitled to the same
75 compensation as that to which he was entitled on the effective date of this article until otherwise
76 changed by law.

77 5. The right to and method of review from a final judgment or appealable order of an
78 associate circuit judge, or municipal judge, when so acting within the jurisdiction of cases
79 heretofore within the jurisdiction of the former magistrate or municipal courts shall, until
80 otherwise provided by law, be de novo before a circuit judge or another associate circuit judge
81 within the circuit except that appeals from an associate circuit judge exercising probate
82 jurisdiction in any circuit, and appeals from any cause from an associate circuit judge as provided
83 by law shall be appealed to the appropriate district of the court of appeals upon a record as
84 authorized by law or supreme court rule. Appeals in misdemeanor cases from the associate
85 circuit judge from the city of St. Louis shall be as now provided until changed by law.

86 6. The costs of judicial proceedings as provided for in all courts existing before the
87 adoption of this article shall remain in effect with respect to cases which would have been within
88 the jurisdiction of those courts until such costs are otherwise changed by law. Until otherwise
89 provided by law, if a cause could have been filed in more than one court before the effective date
90 of this article, the lower cost structure shall be used in calculating costs; provided, however, that
91 a party instituting a civil suit which would have been within the concurrent jurisdiction of the
92 circuit and magistrate courts prior to the effective date of this article may designate the case as
93 being one to be processed in accordance with procedures and rules appertaining before circuit
94 judges, and the court costs heretofore applicable to such cases in circuit court shall apply.

95 7. Until the effective date of this article the courts of common pleas, the St. Louis court
96 of criminal corrections, the magistrate courts, the probate courts and the municipal corporation
97 courts shall continue to have the jurisdiction and power provided in the article repealed hereby
98 and provided by the laws and rules enacted thereunder, and shall continue to follow the
99 procedures as provided in such article, laws and rules.

100 8. Each judge who, on the effective date of this article, becomes a circuit or associate
101 circuit judge in any circuit subject to the provisions of sections 25(a)-(g) of this article shall be
102 eligible for retention in office as a circuit or associate circuit judge respectively by filing in the

office of the secretary of state a declaration of candidacy for election not less than sixty days prior to the holding of the general election next preceding the expiration of his term of office. If a majority of those voting on the question vote against retaining him in office, upon the expiration of his term of office, a vacancy shall exist which shall be filled by appointment as provided in section 25(a); otherwise, said judge shall, unless removed for cause, remain in office for the number of years after December thirty-first following such election as is provided for the full term of such office and at the expiration of each such term shall be eligible for retention in office by election in the same manner prescribed by section 25(c)(1). The secretary of state shall certify the name of such judges in accordance with law or in accordance with section 25(c)(2) of this article.

9. On the effective date of this article the judges of the magistrate court and the judges of the probate court in any circuit which selects judges under the nonpartisan selection of judges shall become nonpartisan judges. The judges of the probate courts of the city of St. Louis and all first class counties, and all second class counties with a population of over sixty-five thousand, when such courts cease to exist, and the judges of the St. Louis court of criminal corrections, shall become circuit judges and receive the compensation payable to circuit judges.

9. a. The judges of all municipal corporations courts in office at the time such courts cease to exist and who qualify for office under the provisions of section 21 of this article shall continue in office until the expiration of the terms to which they have been elected or appointed unless otherwise provided by law. When such courts cease to exist, the judges thereof who continue in office shall become municipal judges and shall serve as such until their terms expire or are otherwise removed. They shall receive the compensation now provided until otherwise changed by law. Such compensation shall be paid by the municipality or municipalities they serve. Upon the expiration of their terms, they shall become eligible for retention in office as municipal judges in the same manner as now provided for the selection of municipal judges in the municipality they serve until otherwise provided by law. In the event the municipal judge now serving shall fail, refuse or be disqualified from continuing in office, the municipality may elect or appoint a municipal judge in the same manner as is now provided in that municipality for selection of a municipal judge unless otherwise provided by law. All expenses incidental to the functioning of municipal judges, including the cost of any staff, and their quarters shall be paid and provided by the respective municipalities as now provided for municipal courts until otherwise provided by law. In municipalities with a population of under four hundred thousand which do not have a municipal judge or for which no municipal judge is provided by law, associate circuit judges shall hear and determine violations of municipal ordinances. No associate circuit judge shall, however, act as a municipal judge in any city with a population of four hundred thousand or more until otherwise provided by law.

139 10. a. 1. Until otherwise provided by law, circuit clerks in each circuit and county shall
140 be selected in the same manner as provided by law on the effective date of this article, except
141 that in counties having a charter form of government, the circuit clerk shall be selected in the
142 manner as provided in the charter of such county.

143 2. Upon the expiration of the terms of office of the clerk of the circuit court for criminal
144 causes of the city of St. Louis, and the term of the clerk of the St. Louis court of criminal
145 correction, the offices of such clerks shall cease to exist and thereafter the clerk of the circuit
146 court of the city of St. Louis shall have the powers and perform the duties and functions of such
147 clerks and shall serve all divisions of the circuit court, except the courts presided over by an
148 associate circuit judge, the judge of the probate division of the circuit court and by municipal
149 judges.

150 3. In any division of the circuit court presided over by an associate circuit judge, in the
151 probate division of the circuit court, and in any division presided over by a municipal judge, the
152 clerks and their deputies of the respective divisions shall continue to be selected in the same
153 manner as provided for by law on the effective date of this article until otherwise changed by
154 law.

155 4. There shall continue to be an office of circuit clerk in each county of the circuit, until
156 otherwise changed by law.

157 b. Upon the effective date of this article, the office of constable serving magistrate courts
158 is abolished. The functions, powers and duties of such constables shall be transferred to and be
159 performed by the sheriff of the county or the sheriff of the city of St. Louis.

160 c. Upon the effective date of this article the office of prosecuting attorney of the city of
161 St. Louis shall be abolished and all the duties, powers, and functions of such office shall be
162 transferred to the circuit attorney of the city of St. Louis who shall have such powers and perform
163 such functions and duties as the prosecuting attorney of the city of St. Louis.

164 d. No election shall be held in 1978 for the offices which are abolished by this subsection
165 10.

166 11. The commissioners of the supreme court holding office on the effective date of this
167 article shall continue to hold office as commissioners of the court until the end of their terms,
168 and shall be eligible for reappointment thereafter from term to term under existing law until
169 retirement, death, resignation or removal for cause. Upon the occurrence of such vacancy in the
170 office of commissioner of the supreme court, such office shall cease to exist. Commissioners,
171 in addition to their regular duties, shall be subject to temporary assignment for the performance
172 of judicial duties as special judges of the supreme court, court of appeals, or circuit court on
173 order of the supreme court. During such temporary assignments, commissioners sitting as

special judges shall have the same powers, duties, and responsibilities as are vested by law in the regular judges of the courts to which they are assigned.

12. The boundaries and territorial jurisdiction of the districts of the court of appeals and of the judicial circuits as they exist on the effective date of this article shall be continued in effect until such time as changed by law.

13. The [commission on retirement, removal and discipline and the] nonpartisan appellate and circuit judicial commissions in existence on the effective date of this article shall continue to exist, and the terms of office for such commissions shall continue in effect.

14. "Judge" as used in sections 20, 24 and 26 of this article shall include commissioners of the supreme court.

15. Nothing in this article shall deprive any person of any right or privilege to retire and the retirement benefits to which he was entitled immediately prior to the effective date of this article.

16. A municipal corporation with a population of under four hundred thousand shall have the right to enforce its ordinances and to conduct prosecutions before an associate circuit judge in the absence of a municipal judge and in appellate courts under the process authorized or provided by this article and shall receive and retain any fines to which it may be entitled. All court costs shall be paid to and deposited monthly in the state treasury. No filing fees shall be charged in such prosecutions unless and until provided for by a law enacted after the adoption of this article.

17. Until otherwise provided by law, the circuit courts shall continue to have jurisdiction to review administrative decisions, findings, rules, and orders in the manner and practice and pursuant to the laws and rules then in force at the time this article becomes effective.

18. All rights, claims, causes of action and obligations existing and all contracts, prosecutions, recognizances and other instruments executed or entered into and all indictments, informations, and complaints which shall have been filed and all actions which shall have been instituted and all fines, penalties and forfeitures assessed, due or owing prior to the effective date of this article shall continue to be as valid as if this article had not been adopted.

19. The general assembly may enact such laws and make such appropriations as may be necessary to carry out the provisions of this article.

20. All laws and rules inconsistent with the provisions of this article shall, on the effective date hereof, be and are repealed. Except to the extent inconsistent with the provisions of this article, all provisions of law and rules of court in force on the effective date of this amendment shall continue in effect until superseded in a manner authorized by the constitution or by law.

209 21. In the event that a new district of the court of appeals is established, the judges
210 presently serving on any district of the court of appeals shall continue to be judges of the court
211 of appeals to which appointed although they are not residents of the court of appeals district in
212 which they serve.

213 22. Until otherwise provided by law, in any cause heard and determined by an associate
214 circuit judge, the associate circuit judge shall utilize electronic, magnetic, or mechanical sound
215 or video recording devices for the purpose of preserving the record. Electronic, magnetic, or
216 mechanical recording devices shall be approved by the office of state courts administrator prior
217 to their utilization by any associate circuit judge.

218 23. Each circuit in which judges are selected under the nonpartisan court plan, on the
219 effective date of this article, including the circuits of Platte county, Clay county, and St. Louis
220 county, shall continue under the nonpartisan court plan until and unless such method of selection
221 of judges is discontinued by the voters of the circuit as provided by sections 25(a)-(g) of this
222 article.

223 24. [Judges, other than municipal judges, not selected under the provisions of sections
224 25(a)-(g) of this article who on the effective date of this article or within six months thereafter,
225 are seventy years of age or older, may petition the commission on retirement, removal and
226 discipline to continue to serve until age seventy-six if he has not completed a total of twelve
227 years of service as a judge.] Judges, other than municipal judges, not selected under the
228 provisions of sections 25(a)-(g) of this article who are in office on the effective date of this
229 article, may[, within six months before attaining the age of seventy years, petition the
230 commission on retirement, removal, and discipline to be allowed to] serve after he **or she** has
231 attained [that] **the age of seventy** until age seventy-six or has completed a total of twelve years
232 of service as a judge, whichever shall first occur. [If the commission finds the petitioner to be
233 able to perform his duties and approves such service, the petitioner may continue to serve as such
234 a judge until age seventy-six if he has not completed a total of twelve years of service as a judge
235 at such age.] No such judge shall be permitted to serve as such a judge beyond the age of
236 seventy-six years regardless of whether or not he **or she** has completed a total of twelve years
237 except for the purpose of completing the term to which he **or she** was elected or appointed.

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