

SCS SJR 51 -- NONPARTISAN SELECTION OF JUDGES

SPONSOR: Lembke (Cox)

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

Upon voter approval, this proposed constitutional amendment changes the composition of the Appellate Judicial Commission and the selection process for the appointment of judges to the Supreme Court and the Court of Appeals. The number of individuals submitted by the Appellate Judicial Commission for consideration by the Governor for a vacancy in the Supreme Court or Court of Appeals is increased from three to four.

Currently, the commission consists of a judge of the Missouri Supreme Court chosen by its members; three attorney members, one elected by members of the Missouri Bar in each appellate district; and three non-attorney members, one appointed by the Governor from each appellate district. The resolution changes the membership to consist of seven voting members and one nonvoting member including a former judge of the court of appeals or the Supreme Court who has not lost a retention election or been removed for cause to serve as the nonvoting member selected by the members of the Supreme Court whose first term will begin January 15, 2013; a member of the Missouri Bar from each court of appeals district elected by its members in each district; and four citizens appointed for a four-year term by the Governor, one from each court of appeals district and one from the state at-large. The appointed members will serve staggered terms so that the term of two members will end on January 15, 2015, and the term of two members will end on January 15, 2017. The terms of all subsequently appointed members will end four years after the termination of the prior term. Vacancies occurring in unexpired terms must be filled for the remainder of the unexpired term. These changes take effect on January 15, 2013.

FISCAL NOTE: Estimated Net Effect on General Revenue Fund of an income of \$0 or a cost of More than \$7,000,000 in FY 2013, an income of \$0 in FY 2014, and an income of \$0 in FY 2015. No impact on Other State Funds in FY 2013, FY 2014, and FY 2015.

PROPOSERS: Supporters say that the bill will allow the people to have more democratic influence on judicial selection because they can hold the Governor accountable for his or her selection of a potential majority of judicial commission members. This may reduce the influence of special groups such as the organized bar and judges on the judicial selection process.

Testifying for the bill were Senator Lembke; Missouri Family

Network; Associated Builders and Contractors; and Concerned Women for America of Missouri.

OPPONENTS: Those who oppose the bill say that the current Missouri Plan functions very well and no one has successfully demonstrated that it has created serious problems. In practice, commission votes never break down along lawyer versus non-lawyer members and governors have been generally successful in appointing nominees with a similar political philosophy. It is important to retain a judge member on the commission with voting powers because this is useful when deciding how to choose other judges. The proposed bill gives the Governor complete power over judicial selection because there is no Senate confirmation process and almost no states allow the Governor to dominate judicial selection in this manner by appointing a majority of commission members.

Testifying against the bill were Missouri Bar; Missouri Association of Defense Attorneys; Missouri School Boards Association; Greater Kansas City Chamber of Commerce; Missouri Republican Attorneys for Civil Justice; Honorable Hal Lowenstein; and Honorable Reuben A. Shelton.

OTHERS: Others testifying on the bill say that all political and judicial power should ultimately be subject to the people and that retention elections do not work as an effective check on the judiciary and that there are some technical issues which need to be corrected.

Testifying on the bill were Ron Calzone; and Alex Bartlett, Esq.