

FIRST REGULAR SESSION

SENATE JOINT RESOLUTION NO. 9

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS LEMBKE AND CUNNINGHAM.

Read 1st time January 20, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

0873L.011

JOINT RESOLUTION

Submitting to the qualified voters of Missouri an amendment repealing sections 25(a), 25(d), and 25(e), of article V of the Constitution of Missouri, and adopting three new sections in lieu thereof relating to the appellate judicial commission.

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

That at the next general election to be held in the state of Missouri, on
2 Tuesday next following the first Monday in November, 2010, or at a special
3 election to be called by the governor for that purpose, there is hereby submitted
4 to the qualified voters of this state, for adoption or rejection, the following
5 amendment to article V of the Constitution of the state of Missouri:

Section A. Sections 25(a), 25(d), and 25(e), article V, Constitution of
2 Missouri, are repealed and three new sections adopted in lieu thereof, to be
3 known as sections 25(a), 25(d), and 25(e), to read as follows:

Section 25(a). Whenever a vacancy shall occur in the office of judge of any
2 of the following courts of this state, to wit: The supreme court, the court of
3 appeals, or in the office of circuit or associate circuit judge within the city of St.
4 Louis and Jackson County **and any other judicial circuit outside of the city**
5 **of St. Louis and Jackson County which has, in accordance with the**
6 **provisions of section (25)b of this article, elected to have their circuit**
7 **and associate circuit judges appointed by the governor in the manner**
8 **provided in section 25(a) of this article**, the governor shall fill such vacancy
9 by appointing one of [three] **five** persons possessing the qualifications for such
10 office, who shall be nominated and whose names shall be submitted to the
11 governor by a nonpartisan judicial commission established and organized as
12 hereinafter provided. [If the governor fails to appoint any of the nominees within

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

13 sixty days after the list of nominees is submitted, the nonpartisan judicial
14 commission making the nomination shall appoint one of the nominees to fill the
15 vacancy.] **The governor may veto the first list of nominees submitted by**
16 **notifying the commission of his or her objection within sixty days after**
17 **the first list of nominees is submitted to the governor. The commission**
18 **shall thereafter submit a new list of nominees for the governor's**
19 **consideration. If the governor fails to appoint any of the nominees**
20 **from the second list within sixty days after the second list of nominees**
21 **is submitted, the lieutenant governor shall appoint one of the nominees**
22 **on the second list to fill the vacancy. If the lieutenant governor fails**
23 **to appoint any of the nominees from the second list within sixty days**
24 **after the second list of nominees is submitted, the nonpartisan judicial**
25 **commission charged with submitting the nominations shall appoint one**
26 **nominee from the second list of nominees to fill the vacancy.**

Section 25(d). Nonpartisan judicial commissions whose duty it shall be to
2 nominate and submit to the governor names of persons for appointment as
3 provided by sections 25(a)-(g) are hereby established and shall be organized on
4 the following basis: For vacancies in the office of judge of the supreme court or
5 of the court of appeals, there shall be one such commission, to be known as "The
6 Appellate Judicial Commission"; for vacancies in the office of circuit judge or
7 associate circuit judge of any circuit court subject to the provisions of sections
8 25(a)-(g) there shall be one such commission, to be known as "The Circuit
9 Judicial Commission", for each judicial circuit which shall be subject to the
10 provisions of sections 25(a)-(g); the appellate judicial commission shall consist of
11 [a judge of the supreme court selected by the members of the supreme court, and
12 the remaining members shall be] **seven members** chosen in the following
13 manner: The members of the bar of this state residing in each court of appeals
14 district shall elect one of their number to serve as a member of said commission,
15 and the governor shall appoint one citizen, not a member of the bar, from among
16 the residents of each court of appeals district, to serve as a member of said
17 commission, **and an additional citizen, from anywhere in the state** and the
18 members of the commission shall select one of their number to serve as
19 [chairman] **chair. Every appointment to the appellate judicial**
20 **commission shall be subject to the advice and consent of the majority**
21 **of the senate, who shall confirm or reject such appointment within**
22 **thirty legislative days of appointment by the governor. Each circuit**

23 judicial commission shall consist of five members[, one of whom shall be the chief
24 judge of the district of the court of appeals within which the judicial circuit of
25 such commission, or the major portion of the population of said circuit is situated
26 and the remaining four members shall be] chosen in the following manner: The
27 members of the bar of this state residing in the judicial circuit of such commission
28 shall elect two of their number to serve as members of said commission, and the
29 governor shall appoint [two] **three** citizens, [not members of the bar,] from
30 among the residents of said judicial circuit, **two of whom shall not be**
31 **members of the bar**, to serve as members of said commission, the members of
32 the commission shall select one of their number to serve as [chairman] **chair**;
33 and the terms of office of the members of such commission shall be [fixed by law,
34 but no law shall increase or diminish the term of any member then in office.]
35 **four years expiring on January fifteenth of the fourth year, and each**
36 **four-year term shall begin at the expiration of the term immediately**
37 **preceding it. No law or court rule shall increase, diminish, or**
38 **otherwise adjust the terms of any member. At the time of the adoption**
39 **of this section, current terms of members of all such commissions shall**
40 **expire and new members shall be selected in accordance with this**
41 **section. Every appointment to a circuit judicial commission shall be**
42 **subject to the advice and consent of the majority of the senate, who**
43 **shall confirm or reject such appointment within thirty legislative days**
44 **of appointment by the governor. A governor first taking office shall**
45 **have the authority, within sixty days of taking the oath of office, to**
46 **remove any or all of the members of the appellate judicial commission**
47 **or the circuit judicial commission appointed by a preceding governor,**
48 **and to appoint such members as he or she determines appropriate**
49 **subject to the provisions of this section.** No member of any such
50 commission [other than a judge] shall hold any public office, and no member shall
51 hold any official position in a political party. Every such commission may act
52 only by the concurrence of a majority of its members. The members of such
53 commission shall receive no salary or other compensation for their services but
54 they shall receive their necessary traveling and other expenses incurred while
55 actually engaged in the discharge of their official duties. **All such commissions**
56 **shall discharge their duties in accordance with the policy of promoting**
57 **openness and public access. The list of applicants for any judicial**
58 **vacancy shall be a public record and their names shall be posted on the**

59 supreme court's web site. All information available to such
60 commissions in their proceedings shall be made available to the
61 governor. All hearings, debates, and votes of the commission shall be
62 open to the public and to the press, and such meetings shall be held on
63 no less than seventy-two hours public notice. Every applicant
64 nominated and whose names shall be submitted to the governor as
65 provided in section 25(a) of this article shall be subject to a background
66 check, including a criminal check, which shall not be a public record
67 but shall be available to the commission and the governor. Sessions or
68 communications not open to the public shall be limited to those areas
69 relating to the interviews by the commission, internal deliberations of
70 the commission concerning the final list of five qualified persons to be
71 submitted to the governor, matters of national security, or allegations,
72 not to include convictions, of criminal or morally reprehensible
73 behavior. All such commissions shall be administered, and the procedures
74 for all elections provided for under this section shall be held and regulated,
75 under such rules as the [supreme court shall promulgate] **commission shall**
76 **establish so long as such rules are in accordance with the provisions of**
77 **this article and not superseded by subsequently enacted legislation.**

Section 25(e). All expenses incurred in administering sections 25(a)-(g),
2 when approved by the [supreme court] **commissioner of administration**, shall
3 be paid out of the state treasury. The [supreme court] **commission** shall certify
4 such expense to the commissioner of administration, who shall draw his warrant
5 therefor payable out of funds not otherwise appropriated.

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