

STATE OF KANSAS

HOUSE OF REPRESENTATIVES

MR. CHAIRMAN:

I move to amend **SB 83**, as amended by House Committee, on page 2, following line 30, by inserting:

"New Sec. 2. (a) On and after July 1, 2011, any vacancy occurring in the office of any judge of the court of appeals and any position to be open on the court of appeals as a result of enlargement of such court pursuant to K.S.A. 20-3002, and amendments thereto, or the retirement or failure of an incumbent to file such judge's declaration of candidacy to be retained in office pursuant to K.S.A. 20-3006, and amendments thereto, or failure of a judge to be elected to be retained in office, shall be filled by appointment by the governor, with the consent of the senate.

(b) Whenever a vacancy occurs, will occur or position opens on the court of appeals, the clerk of the supreme court shall promptly give notice to the governor.

(c) No person appointed pursuant to subsection (a) shall assume the office of judge of the court of appeals until the senate, by an affirmative vote of the majority of all members of the senate then elected or appointed and qualified, consents to such appointment. The senate shall vote to consent to any such appointment not later than 60 days after such appointment is received by the senate. If the senate is not in session and will not be in session within the 60-day time limitation, the president of the senate shall convene the senate for the sole purpose of voting on such appointment and no other action shall be in order during such session. In the event a majority of the senate does not vote to consent to the appointment, the governor, within 60 days after the senate vote on the previous appointee, shall appoint another person possessing the qualifications of office and such subsequent appointment shall be considered by the senate in the same procedure as provided in this section. The same appointment

and consent procedure shall be followed until a valid appointment has been made. No person who has been previously appointed but did not receive the consent of the senate shall be appointed again for the same vacancy. If the senate fails to vote on an appointment within the 60-day time limitation, the senate shall be deemed to have given consent to such appointment.

(d) Persons who are appointed as judges of the court of appeals pursuant to K.S.A. 20-3005, prior to its repeal, and this section, shall commence the duties of office upon appointment and consent, and each judge shall have all the rights, privileges, powers and duties prescribed by law for the office of judge of the court of appeals.

(e) Any person appointed shall be a person of recognized integrity, character, ability, experience and judicial temperament, to the end that persons serving as judges of the court of appeals will be the best qualified therefor.

Sec. 3. K.S.A. 2010 Supp. 20-3002 is hereby amended to read as follows: 20-3002. (a) On and after January 1, 2008, through December 31, 2011, the court of appeals shall consist of 13 judges whose positions shall be numbered one to 13. On and after January 1, 2012, the court of appeals shall consist of 14 judges whose positions shall be numbered one to 14. Judges of the court of appeals shall possess the qualifications prescribed by law for justices of the supreme court.

(b) Judges of the court of appeals shall be ~~selected~~appointed in the manner provided by ~~K.S.A. 20-3003 through 20-3010~~section 2, and amendments thereto. Each judge of the court of appeals shall receive an annual salary in the amount prescribed by law. No judge of the court of appeals may receive additional compensation for official services performed by the judge. Each such judge shall be reimbursed for expenses incurred in the performance of such judge's official duties in the same manner and to the same extent justices of the supreme court are reimbursed for such expenses.

(c) The supreme court may assign a judge of the court of appeals to serve temporarily on the supreme court.

(d) Any additional court of appeals judge position created by this section shall be considered a position created by the supreme court and not a civil appointment to a state office pursuant to K.S.A. 46-234, and amendments thereto.

Sec. 4. K.S.A. 20-3006 is hereby amended to read as follows: 20-3006. ~~(a) Persons who are appointed as judges of the court of appeals pursuant to K.S.A. 20-3005 and amendments thereto shall commence the duties of office upon appointment, and each judge shall have all the rights, privileges, powers and duties prescribed by law for the office of judge of the court of appeals.~~

~~(b)(1)(a)~~ ~~Not~~For judges of the court of appeals holding office on June 30, 2011, Not less than 60 days prior to the holding of the general election next preceding the expiration of the term of any such judge of the court of appeals, the judge may file in the office of the secretary of state a declaration of candidacy for retention in office. If a declaration is not filed as provided in this section, the position held by the judge shall be vacant upon the expiration of the judge's term of office. If such declaration is filed, the judge's name shall be submitted at the next general election to the electors of the state on a separate judicial ballot, without party designation, reading substantially as follows:

"Shall _____ (Here insert name of judge.) _____, Judge of the Court of Appeals, be retained in office?"

~~(2)(b)~~ If a majority of those voting on the question votes against retaining the judge in office, the position which the judge holds shall be vacant upon the expiration of the judge's term of office. Otherwise, unless the judge is removed for cause, the judge shall remain in office for a term of four years from the second Monday in January following the election. At the expiration of each term, unless by law the judge is compelled to retire, the judge ~~holding office on June 30, 2011~~ shall be eligible for retention in office by election in the manner prescribed in this section.

~~(3)(c)~~ If a majority of those voting on the question votes against the judge's retention, the

secretary of state, following the final canvass of votes on the question, shall certify the results to the clerk of the supreme court. Any such judge who has not been retained in office pursuant to this section shall not be eligible for nomination or appointment to the office of judge of the court of appeals prior to the expiration of four years after the expiration of the judge's term of office.

~~(4)(d)~~ Election laws applicable to the general election of other state officers shall apply to elections upon the question of retention of judges of the court of appeals pursuant to this section, to the extent that they are not in conflict with and are consistent with the provisions of this ~~aet.~~section.

Sec. 5. K.S.A. 20-3010 is hereby amended to read as follows: 20-3010. (a) Any person appointed to the office of judge of the court of appeals ~~pursuant to K.S.A. 20-3009 shall commence upon the duties of his or her office on the date such appointment takes effect, and any person so appointed shall have all the rights, privileges, powers and duties prescribed by law for the office of judge of the court of appeals. Any such judge who is so appointed to fill a vacancy or appointed by reason of the expiration of a term of office, shall serve until the second Monday in January following the next general election which occurs after one year in office and shall be eligible to succeed himself or herself~~ be retained in office for a full term of four ~~(4)~~ years as provided in K.S.A. 20-3006, and amendments thereto, for the retention of judges first appointed to the court of appeals.

(b) If a majority of the votes cast and counted at such election is in favor of retaining such judge in office, ~~he or she~~ the judge shall remain in office for a regular term of four years from the second Monday in January next following such election. Thereafter, such judge shall be subject to retention in office as provided in K.S.A. 20-3006, and amendments thereto. If a majority of the votes cast and counted at such election is against retaining such judge in office, such judge's position on the court of appeals shall become vacant on the second Monday in January next following the election, and a successor shall be appointed pursuant to ~~K.S.A. 20-3007, 20-3008 and 20-3009~~ section 2, and amendments thereto. If such judge does not declare ~~his or her~~ such judge's candidacy for election to

~~sueeed himself or herself~~ be retained in office, such judge's position on the court of appeals shall be vacant on the second Monday in January next following such election.";

And by renumbering the remaining sections accordingly;

Also on page 2, in line 31, by striking "is" and inserting ", 20-3004, 20-3005, 20-3006, 20-3007, 20-3008, 20-3009 and 20-3010 and K.S.A. 2010 Supp. 20-3002 are";

On page 1, in the title, in line 1, following "retirants;" by inserting "relating to the appointments of court of appeals judge;"; in line 2, by striking "and repealing the existing section" and inserting ", 20-3006 and 20-3010 and K.S.A. 2010 Supp. 20-3002 and repealing the existing sections; also repealing K.S.A. 20-3004, 20-3005, 20-3007, 20-3008 and 20-3009"

_____District.