

2009 DRAFTING REQUEST

Assembly Joint Resolution

Received: **09/16/2009**

Received By: **smiller**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Gottlieb (608) 267-2369**

By/Representing: **denise solie**

This file may be shown to any legislator: **NO**

Drafter: **smiller**

May Contact:

Addl. Drafters:

Subject: **Constitutional Amendments**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gottlieb@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Appointment and retention of supreme court justices

Instructions:

See attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| /? | smiller | csicilia | | _____ | | | |
| | 09/24/2009 | 10/05/2009 | | _____ | | | |
| | smiller | csicilia | | _____ | | | |
| | 10/05/2009 | 10/07/2009 | | _____ | | | |
| /1 | | csicilia | phenry | _____ | | lparisi | |
| | | 10/13/2009 | 10/07/2009 | _____ | | 10/07/2009 | |
| /2 | | | jfrantze | _____ | | lparisi | cduerst |
| | | | 10/13/2009 | _____ | | 10/13/2009 | 11/16/2009 |

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

None

<END>

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*(SRM)
- Steve changed + printed
new request sheet. Email attached*

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Merit selection of supreme court justices

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See attached

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Addl. Drafters:

Subject: Constitutional Amendments

Extra Copies:

CJS
JLD
WLJ
NWN
KJF
BJK } all the editors
CMH
RCT

Submit via email: YES

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| | 10/05/2009 | 10/07/2009 | | _____ | | | |
| /1 | | | phenry | _____ | lparisi | | |
| | | | 10/07/2009 | _____ | 10/07/2009 | | |

FE Sent For: 1/2 cjs 10/13/09 [Signature] 10/13

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} all the editors

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|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| 1/? | smiller | 1 gjs | 9/28/09 | 10/7/09 | 12/7/09 | | |

ph/md
NN

FE Sent For:

<END>

Miller, Steve

From: Solie, Denise
Sent: Wednesday, September 16, 2009 7:21 AM
To: Miller, Steve; Nelson, Robert P.
Subject: FW: drafting instructions

Hello.

I checked bills from prior sessions, but I'm not certain to whom I should send this drafting request.

Would you please draft this for Rep. Gottlieb, or re-direct the request to the appropriate person?

We'd appreciate knowing to whom this is assigned.

This is a high priority drafting request.

Please call or email if you have any questions.

denise solie
7-2369

From: Gottlieb, Mark
Sent: Tuesday, September 15, 2009 9:54 PM
To: Solie, Denise
Subject: drafting instructions

Please submit these drafting instructions:

3453

Constitutional Amendment

Merit Selection of Supreme Court Justices

1. *Justices shall be appointed by the governor for 10-year terms of office, subject to confirmation by the senate.*
2. *Confirmation shall require a three-fifths vote of the senate. The senate shall vote on confirmation within 90 days of appointment. If the governor's appointee is not confirmed, the governor shall appoint a different person within 90 days.*
3. *Except as provided in (5), no person shall be appointed justice of the supreme court who has not served at least eight years as a judge of the circuit court or court of appeals.*
4. *Each justice's name shall be placed on the ballot for retention in office at the non-partisan election preceding the end of their term, unless they notify the clerk of the supreme court at least 120 days prior to election day that they decline retention. The voters shall be given the option to vote "for" or "against" retention. If a majority of the votes cast are marked "against retention", or the justice declines retention, the justice's appointment shall cease at the end of the term, and the governor shall appoint a different person within 90 days, who shall assume office upon confirmation, otherwise, the justice shall continue to serve for another 10-year term.*
5. *Justices elected or appointed prior to the enactment of this amendment shall continue to serve until the end of their term, at which time they shall be eligible for appointment as specified above.*

09/16/2009

Miller, Steve

From: Solie, Denise
Sent: Thursday, October 01, 2009 11:54 AM
To: Miller, Steve
Subject: Drafting request - Merit Selection - Modification

Importance: High

Steve,

Mark has been thinking about the draft, and wants to modify his original drafting request, as follows:

Regarding justices who are already on the Court at the time the constitutional amendment would take effect: They would be subject to a retention election. They would NOT have to get a governor's appointment.

Please call if you have any questions. Thanks.

Denise Solie
Office of Rep. Mark Gottlieb
(608) 267-2370
Good government starts here!



1
cjs

INS #1

2009 ASSEMBLY JOINT RESOLUTION

\$JTK

Currently, the constitution prohibits any elected justice or judge from holding any ^{other} public office. This amendment extends the prohibition to appointed judges and justices and judges.

in 9-24
and elections to consider retention of justices
(first consideration)

Gen Cat

retained

fifths

1 **Relating to:** appointment of supreme court justices.

Analysis by the Legislative Reference Bureau

Under current law, supreme court justices are elected by the people. This proposed constitutional amendment, proposed to the 2009 legislature on first consideration, requires the governor to appoint, with the advice and consent of three-fifths of the senate, justices of the supreme court for ten-year terms. Once appointed, justices may be ~~confirmed~~ for additional ten-year terms by a vote of the people. Justices serving on the supreme court at the time of ratification would be eligible to stand for election for retention. If a justice declines retention, the governor shall appoint a new justice with the advice and consent of three-fifths of the senate. When vacancies occur on the supreme court, the governor shall appoint a new justice for a ten-year term with the advice and consent of the senate. Appointees to the supreme court will be required to have served at least eight years as a judge of the circuit court or the court of appeals. INS #1

must

three-fifths of must

A proposed constitutional amendment requires adoption by two successive legislatures, and ratification by the people, before it can become effective.

2 **Resolved by the assembly, the senate concurring, That:**

3 **SECTION 1.** Section 4 (1) of article VII of the constitution is amended to read:

4 [Article VII] Section 4 (1) (a) The supreme court shall have 7 members who
5 shall be known as justices of the supreme court.

~~MS 1 or who is appointed
#2 or elected within one
year after
ratification~~

1 (b) Justices shall be elected for 10-year terms of office commencing with the
2 August 1 next succeeding the election. Only one justice may be elected in any year.
3 This paragraph does not apply on or after the day that is one year after the date of
4 ratification of par. (d).

5 (c) Any 4 justices shall constitute a quorum for the conduct of the court's
6 business.

7 SECTION 2. Sections 4 (1) (d) and (e) of article VII of the constitution are created
8 to read:

9 [Article VII] Section 4 (1) (d) Beginning on the day that is one year after the
10 date of ratification of this paragraph, each justice's name shall be placed on the ballot
11 for retention in office at the non-partisan election immediately preceding the end of
12 their term, unless they notify the clerk of the supreme court at least 120 days prior
13 to election day that they decline retention. The voters shall be given the option to vote
14 "for retention" or "against retention." If a majority of the votes cast are "against
15 retention," or if the justice declines retention, the justice's appointment shall cease at
16 the end of the term, and the governor shall appoint a different person within 90 days,
17 who shall assume office upon confirmation, otherwise, the justice shall continue to
18 serve for another 10-year term.

19 (e) Each person who is serving as a justice on the date of ratification of
20 paragraph (c) may continue to serve until the person's term expires, unless the
21 person vacates his or her office before that time.

22 par. SECTION 3. Section 9 of article VII of the constitution is amended to read:

23 [Article VII] Section 9. When a vacancy occurs in the office of justice of the
24 supreme court or judge of any court of record, the vacancy shall be filled by
25 appointment by the governor, which shall continue until a successor is elected and

held in the same year the
justice's term expires

before
the
date

day
that
is one
year
after
the

1 qualified. There shall be no election for a justice or judge at the partisan general
 2 election for state or county officers, nor within 30 days either before or after such
 3 election. When a vacancy occurs in the office of justice of the supreme court, the
 4 governor shall nominate and, with the advice and consent of the senate upon a ^{vote of}
 5 three-fifths ^{of the members present and voting} ~~vote~~ ^{at comma stays} appoint a new justice to serve the unexpired term. Within 90 days
 6 of the nomination, the senate shall vote on confirmation. If the nominee is not
 7 confirmed, the governor shall, within 90 days, nominate a different person.

8 SECTION 4. Section 10 (1) of article VII of the constitution is amended to read:

9 [Article VII] Section 10 (1) No justice of the supreme court or judge of any court
 10 of record shall hold any other office of public trust, except a judicial office, during the
 11 term for which he or she is elected or appointed. No person shall be eligible to the
 12 office of judge who shall not, at the time of election or appointment, be a qualified
 13 elector within the jurisdiction for which chosen ^{nor} shall any person be eligible to
 14 serve as justice of the supreme court who has not served at least eight ⁸ years as a judge
 15 of the circuit court or the court of appeals.

16 SECTION 5. Section 1m of article XIII of the constitution is created to read:

17 [Article XIII] Section 1m. ~~Nonpartisan election.~~ The legislature shall
 18 provide by law for a nonpartisan election to be held in any year when it is required
 19 to elect or vote on retention of one or more nonpartisan officers in that year.

20 SECTION 6. ~~Numbering of new provision.~~ The new paragraph (c) of
 21 subsection (1) of section 4 of article VII of the constitution created in this joint
 22 resolution shall be designated by the next higher open paragraph letter in that
 23 subsection in that section in that article if before the ratification by the people of the
 24 amendment proposed in this joint resolution, any other ratified amendment has
 25 created a paragraph (c) of subsection (1) of section 4 of article VII of the constitution

1 of this state. If one or more joint resolutions create a paragraph (c) of subsection (1)
 2 of section 4 of article VII simultaneously with the ratification by the people of the
 3 amendment proposed in this joint resolution, the paragraphs created shall be
 4 numbered and placed in a sequence so that the paragraphs created by the joint
 5 resolution having the lowest enrolled joint resolution number have the letters
 6 designated in that joint resolution and the paragraphs created by the other joint
 7 resolutions have letters that are in the same ascending order as are the numbers of
 8 the enrolled joint resolutions creating the paragraphs.

INSERT 9-B

9 ***Be it further resolved, That*** this proposed amendment be referred to the
 10 legislature to be chosen at the next general election and that it be published for 3
 11 months previous to the time of holding such election.

(END)

1
2
3
4
5
6
7

INSERT 9-B

[#]
SECTION 1. Numbering of new provision. If another joint resolution ratified
by the people creates the number of any section or subunit created in this joint
resolution, the chief of the legislative reference bureau shall determine the
sequencing and the numbering of conflicting provisions

provision

S

that

~~created in this joint resolution~~

FINAL
VERSION
OCT. 6, '09



StaxS

2009 ASSEMBLY JOINT RESOLUTION

in 10-13

Reger Cat

1 **To amend** section 4 (1) of article VII, section 9 of article VII and section 10 (1) of
 2 article VII; and **to create** section 4 (1) (d) and (e) of article VII and section 1m
 3 of article XIII of the constitution; **relating to:** appointment of supreme court
 4 justices and elections to consider retention of justices (first consideration).

Analysis by the Legislative Reference Bureau

Under current law, supreme court justices are elected by the people. This proposed constitutional amendment, proposed to the 2009 legislature on first consideration, requires the governor to appoint, with the advice and consent of three-fifths of the senate, justices of the supreme court for ten-year terms. Once appointed, justices may be retained for additional ten-year terms by a vote of the people. Justices serving on the supreme court at the time of ratification would be eligible to stand for election for retention. If a justice declines retention, the governor must appoint a new justice with the advice and consent of three-fifths of the senate. When vacancies occur on the supreme court, the governor must appoint a new justice for a ten-year term with the advice and consent of three-fifths of the senate. Appointees to the supreme court will be required to have served at least eight years as a judge of the circuit court or the court of appeals. Currently, the constitution prohibits any elected justice or judge from holding any other public office. This amendment extends the prohibition to appointed justices and judges.

A proposed constitutional amendment requires adoption by two successive legislatures, and ratification by the people, before it can become effective.

1 ***Resolved by the assembly, the senate concurring, That:***

2 **SECTION 1.** Section 4 (1) of article VII of the constitution is amended to read:

3 [Article VII] Section 4 (1) (a) The supreme court shall have 7 members who
4 shall be known as justices of the supreme court.

5 (b) Justices shall be elected for 10-year terms of office commencing with the
6 August 1 next succeeding the election. Only one justice may be elected in any year.

7 This paragraph does not apply on or after the day that is one year after the date of
8 ratification of par. (d).

9 (c) Any 4 justices shall constitute a quorum for the conduct of the court's
10 business.

11 **SECTION 2.** Section 4 (1) (d) and (e) of article VII of the constitution are created
12 to read:

13 [Article VII] Section 4 (1) (d) Beginning on the day that is one year after the date
14 of ratification of this paragraph, each justice's name shall be placed on the ballot for
15 retention in office at the nonpartisan election held in the same year the justice's term
16 expires and preceding the end of the justice's term, unless the justice notifies the
17 clerk of the supreme court at least 120 days prior to election day that the justice
18 declines retention. The voters shall be given the option to vote "for retention" or
19 "against retention." If a majority of the votes cast are "against retention," or if the
20 justice declines retention, the justice's appointment shall cease at the end of the
21 justice's term, and the governor shall appoint a different person within 90 days, who
22 shall assume office upon confirmation; otherwise, the justice shall continue to serve
23 for another 10-year term.

1 (e) Each person who is serving as a justice on the day before the date that is one
2 year after the date of ratification of par. (d) may continue to serve until the person's
3 term expires, unless the person vacates his or her office before that time.

4 **SECTION 3.** Section 9 of article VII of the constitution is amended to read:

5 [Article VII] Section 9. When a vacancy occurs in the office of justice of the
6 ~~supreme court or~~ judge of any court of record, the vacancy shall be filled by
7 appointment by the governor, which shall continue until a successor is elected and
8 qualified. There shall be no election for a ~~justice or~~ judge at the partisan general
9 election for state or county officers, nor within 30 days either before or after such
10 election. When a vacancy occurs in the office of justice of the supreme court, the
11 governor shall nominate and, with the advice and consent of the senate upon a vote
12 of three-fifths of the members present and voting, appoint a new justice to serve the
13 unexpired term. Within 90 days of the nomination, the senate shall vote on
14 confirmation. If the nominee is not confirmed, the governor shall, within 90 days,
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22 serve as justice of the supreme court who has not served at least 8 years as a judge
23 of the circuit court or the court of appeals.

24 **SECTION 5.** Section 1m of article XIII of the constitution is created to read:

1 [Article XIII] Section 1m. The legislature shall provide by law for a nonpartisan
2 election to be held in any year when it is required to elect or vote on retention of one
3 or more nonpartisan officers in that year.

constitutional amendment

4 SECTION 6. Numbering of new provisions. If another ~~joint resolution~~
5 ratified by the people creates the number of any provision created in this joint
6 resolution, the chief of the legislative reference bureau shall determine the
7 sequencing and the numbering of ~~that provision~~.

8 ***Be it further resolved, That*** this proposed amendment be referred to the
9 legislature to be chosen at the next general election and that it be published for 3
10 months previous to the time of holding such election.

11 (END)

the provisions whose numbers conflict

Miller, Steve

From: Duerst, Christina
Sent: Monday, November 16, 2009 11:42 AM
To: Miller, Steve
Subject: FW: Draft Review: LRB 09-3453/2 Topic: Merit selection of supreme court justices
Importance: High

From: Handrick, Diane
Sent: Monday, November 16, 2009 11:40 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-3453/2 Topic: Merit selection of supreme court justices

Please change the topic title record to say: Appointment and retention of Supreme Court justices.

(This is not a merit selection proposal.)

Thanks! Please Jacket LRB 09-3453/2 for the ASSEMBLY.

11/16/2009