

Gavel to Gavel

A review of state legislation affecting the courts

June 2008

Special Judicial Selection edition

Focus: Judicial Selection Legislation 2008

Highlights

Legislative Study Committees: Two states (Georgia and West Virginia) authorized legislative committees to examine both selection methods and the possibility of public financing of judicial races. Both committees will make their recommendations at the start of the 2009 legislative sessions.

Switch to Nonpartisan Elections: While several states debated replacing their partisan elections with nonpartisan, only Mississippi passed legislation to require such elections for their Justice Courts.

Move to Merit Selection: Four states (Minnesota, Maryland, Pennsylvania and West Virginia) actively debated moving towards merit selection. Maryland's plan was rejected, while Minnesota's advanced out of committee and is set for additional discussion and debate in 2009.

Modify Merit Selection: Several states (Kansas, Missouri, Oklahoma, Tennessee) tried to require Senate confirmation for candidates submitted by their merit selection panels and nominated by their governors. Utah created a Judicial Performance Evaluation Commission under the executive branch (previously, performance evaluation was conducted within the judicial branch) and gave the new Commission the power to recommend the retention or rejection of candidates up for retention.

End Merit Selection: Tennessee's merit selection plan is set to end in the coming year. The legislation authorizing the state's program will sunset in June 2008 with the merit selection commission to cease operations over the course of the next year. Arizona also saw a concerted effort to end its merit selection system with legislation that would have given judges the option of public financing for judicial elections.

Financing Judicial Campaigns: In addition to the two study commissions noted above, five states (Arizona, Connecticut, Idaho, Illinois, Michigan) saw proposals for public financing of judicial campaigns.



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Legislative Study Committees

GEORGIA HR 47 (enacted) creates a Joint Legislative Study Committee on Judicial Election Reform. The Committee is to “to determine if the independence and impartiality of the courts are threatened by the conduct of these recent [judicial] campaigns.” The Committee is to specifically focus on “the role of political parties in judicial elections, the role of special interest groups and tax-exempt organizations such as political organizations as defined in Section 527(e) of the Internal Revenue Code of 1986 in judicial elections, and how conflicts of interest due to campaign contributions are handled by the courts.” An Advisory Board to the Committee is assigned the task of obtaining information and testimony for the committee and specifically from those “who will be directly affected by any alteration of the existing mode of campaign finance.” The Committee is to report to the Legislature by the start of the 2009 session.

WEST VIRGINIA SCR 69 (enacted) Requests Joint Committee on Government and Finance to study judicial selection methods and public financing of judicial elections. Joint Committee to report by start of 2009 session.

Switch to Nonpartisan elections

ALABAMA HB 444 Requires nonpartisan elections of candidates for state judicial office

ALABAMA HB 624 Requires nonpartisan election of candidates for Circuit and District Court judgeships.

MISSISSIPPI SB 2571 (enacted) Makes Justice Court elections nonpartisan.

MISSOURI SB 757 In those counties that do not use merit selection, requires nonpartisan judicial elections beginning January 1, 2010. Prohibits partisan activity by such candidates and places enforcement with the Missouri Ethics Commission.

WEST VIRGINIA HB 2950 & SB 218 Requires nonpartisan election of all justices to the West Virginia Supreme Court of Appeals and all circuit court judges.

WEST VIRGINIA HB 4650 & SB 475 Requires nonpartisan elections of justices of the West Virginia Supreme Court of Appeals and Circuit Court Judges. Ballot to separate partisan offices from nonpartisan.

End Merit Selection

ARIZONA HCR 2063 & SCR 1021 Ends merit selection for Superior Court judges. Replaces with direct nonpartisan elections. Places Superior Court elections in state public financing system with funding to come from fines assessed on criminal convictions.

TENNESSEE Legislature failed to reauthorize state’s merit selection system. Program to “wind down” under state’s sunset law provisions and terminate completely by June 30, 2009. Appellate judgeships to return to partisan elections for November 2009 elections.

Move to Merit Selection

MARYLAND HB 1275 Provides retention election system for Circuit Court. Governor to appoint judge who would serve for at least 1 year and face retention vote for an additional 10 year term.

MINNESOTA SF 2693 Extends judicial terms in office from 6 to 8 years. Creates merit commission to be composed of 5 members named by Governor (at 2 attorneys & at least 2 non-attorneys), 4 named by Chief Justice (2 attorneys & 2 non-attorneys).

MINNESOTA HF 3023 Extends judicial terms in office from 6 to 8 years. Creates merit selection systems for judges. Nomination commission to be composed of 5 members named by Governor, 2 named by Chief Justice, 4 by Legislative leaders.

MINNESOTA SB 3206 Creates Commission on Judicial Selection. Chair and at least half the members of Commission to be named by Governor. Commission to submit three names to fill judicial vacancies, but Governor may ask for three additional names.

PENNSYLVANIA SB 1324 (constitutional amendment) & SB 1325 (statute) Creates 14 person Appellate Court Nominating Commission. Commission to submit 5 names to Governor.

WEST VIRGINIA SJR 6 Ends partisan elections for Justices of the Supreme Court and Circuit Court Judges. Justices/Judges “are to be appointed based on merit” in a manner to be specified by the legislature.

Modify Merit Selection

ARIZONA HCR 2006 Merit selection threshold raised from counties of 250,000 to counties of 600,000.

KANSAS HB 2799 Creates Court of Appeals judicial nomination commission (currently, Supreme Court nomination commission selects names for Court of Appeals as well). Nominees to be selected by Governor from three names submitted but nominee is subject to Senate confirmation.

KANSAS HCR 5031 Requires Senate confirmation of candidates to Supreme Court. (Senate confirmation not currently required). Changes membership of Supreme Court nominating commission.

KANSAS SCR 1619 Requires Senate confirmation of Supreme Court nominees.

KENTUCKY HB 399 Removes Governor’s authority to appoint 4 non-attorney members of judicial nominating commissions. Grants authority to name 1 non-attorney each to President of the Senate, the Minority Floor Leader of the Senate, the Speaker of the House of Representative

MISSOURI HJR 49 ORIGINAL: Increases to 9 the number of people on the Appellate Judicial Commission, 5 to be non-attorneys appointed by the Governor. (Current commission: 7 people, 3 non-attorney members).

MISSOURI HJR 52 Abolishes the nonpartisan Judicial Commission. Establishes bi-partisan judicial merit selection commission, made up of 2 Bar members not of the same party appointed by the Governor, 2 non-Bar members not of the same party appointed by the Governor, 2 Bar

MISSOURI HJR 73 Eliminates Nonpartisan Judicial Nomination Commissions. Judicial appointments to be made by the Governor and confirmed by newly created Judicial Confirmation Commission.

OKLAHOMA HJR 1077 Requires any appointment by the Governor through existing merit selection process to fill a Judicial Office shall be confirmed by a majority of the Senate. (Currently Senate confirmation not required).

RHODE ISLAND HB 7829 Requires Governor to select from list of names submitted by Judicial Nomination Commission for vacancy (currently, Governor may also select from any names submitted in previous 5 years for same position).

TENNESSEE HB 3990 Revises the membership of the Judicial Selection Commission. Decreases term of commission members from six to four years. Requires Senate confirmation of Governor's appointee from list of names submitted by Commission.

UTAH SB 105 (enacted) Creates 13-member Judicial Performance Evaluation Commission and removes evaluation from the Judicial Council. Commission may recommend retention, recommend against retention, or make no recommendation.

Recommendation (or lack thereof) to be published in voter's guide.

Financing of Judicial Campaigns

ARIZONA HCR 2063 & SCR 1021 Places Superior Court elections in state public financing system with funding to come from fines assessed on criminal convictions. (see *Move to Merit Selection* for bills' other provisions)

CONNECTICUT SB 448 Directs State Elections Enforcement Commission to submit report on inclusion of Probate Judges in state's public campaign financing program. Report due January 1, 2009.

IDAHO SB 1292 Creates Idaho Fair Elections Act to provide an alternative, publically financed campaign option to all statewide offices, state senate or state house of representatives. Supreme Court Justice are "elected by the electors of the state at large."

ILLINOIS SB 2823 Creates the Judicial Campaign Reform Act and a voluntary program of public financing of election campaigns for the offices of judges of the Illinois Supreme Court and Appellate Courts, administered by the State Board of Elections.

MICHIGAN HB 5799 Creates public finance system for Supreme Court races.

NEW JERSEY ACR 82 Prohibits attorneys from contributing to judge's campaign. (see *Move to Merit Selection* for bill's other provisions)

OKLAHOMA HB 2251 Prohibits attorneys from contributing to any candidate seeking judicial office.

WEST VIRGINIA SCR 69 Requests Joint Committee on Government and Finance to study judicial selection methods and public financing of judicial elections. Joint Committee to report by start of 2009 session.

WISCONSIN SB 12 Modifies contribution limits and reporting requirements for Supreme Court and other state campaigns.

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