

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas  
2 90th General Assembly  
3 Fourth Extraordinary Session, 2016  
4

DRAFT MBM/MBM  
SJR

5 By: Senator <NA>  
6

7 **SENATE JOINT RESOLUTION**

8 AN AMENDMENT TO THE ARKANSAS CONSTITUTION CONCERNING  
9 THE PROCESS FOR SELECTING A JUSTICE OF THE SUPREME  
10 COURT AND AMENDING PROVISIONS CONCERNING SERVICE ON  
11 THE SUPREME COURT.  
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13

14 **Subtitle**

15 AN AMENDMENT TO THE ARKANSAS CONSTITUTION  
16 CONCERNING THE PROCESS FOR SELECTING A  
17 JUSTICE OF THE SUPREME COURT AND AMENDING  
18 PROVISIONS CONCERNING SERVICE ON THE  
19 SUPREME COURT.  
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21

22 BE IT RESOLVED BY THE SENATE OF THE NINETIETH GENERAL ASSEMBLY OF THE STATE  
23 OF ARKANSAS  
24

25 That the following is proposed as an amendment to the Constitution of  
26 the State of Arkansas, and upon being submitted to the electors of the state  
27 for approval or rejection at the next general election for Representatives  
28 and Senators, if a majority of the electors voting thereon at the election  
29 adopt the amendment, the amendment shall become a part of the Constitution of  
30 the State of Arkansas, to wit:  
31

32 SECTION 1. Subsection (A) of Section 2 of Amendment 80 to the Arkansas  
33 Constitution is amended to read as follows:

34 (A) The Supreme Court shall be composed of seven Justices, one of whom  
35 shall serve as Chief Justice. The Justices of the Supreme Court shall be  
36 selected ~~from the State at large~~ on the basis of merit as provided under this

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1 amendment.

2

3 SECTION 2. Subsection (A) of Section 16 of Amendment 80 to the  
4 Arkansas Constitution is amended to read as follows:

5 (A)(1) Justices of the Supreme Court and Judges of the Court of  
6 Appeals shall have been licensed attorneys of this state for at least eight  
7 years immediately preceding the date of assuming office. ~~They shall serve~~  
8 ~~eight-year terms.~~ Judges of the Court of Appeals shall serve eight-year  
9 terms.

10 (2) A Justice of the Supreme Court shall serve a term of  
11 fourteen (14) years unless otherwise provided by this amendment.

12

13 SECTION 3. Section 18 of Amendment 80 to the Arkansas Constitution is  
14 amended to read as follows:

15 § 18. Election of ~~Supreme Court Justices and~~ Court of Appeals Judges.

16 (A) ~~Supreme Court Justices and~~ Court of Appeals Judges shall be  
17 elected on a nonpartisan basis by a majority of qualified electors voting for  
18 such office. Provided, however, the General Assembly may refer the issue of  
19 merit selection of members of the ~~Supreme Court and~~ the Court of Appeals to a  
20 vote of the people at any general election. If the voters approve a merit  
21 selection system, the General Assembly shall enact laws to create a judicial  
22 nominating commission for the purpose of nominating candidates for merit  
23 selection to the ~~Supreme Court and~~ Court of Appeals.

24 (B) ~~Vacancies in these offices on the~~ Court of Appeals shall be filled  
25 by appointment of the Governor, unless the voters provide otherwise in a  
26 system of merit selection.

27

28 SECTION 4. Amendment 80 to the Arkansas Constitution is amended to add  
29 additional sections to read as follows:

30 § 23. Judicial Nominating Commission.

31 (a) There is created the Judicial Nominating Commission, consisting of  
32 ten (10) members as follows:

33 (1)(A) Two (2) voting members appointed by the Governor.

34 (B) One (1) member appointed by the Governor shall be a  
35 licensed Arkansas attorney.

36 (C) A member appointed by the Governor shall serve a term

1 of four (4) years;

2 (2)(A) One (1) voting member appointed by the President Pro  
3 Tempore of the Senate.

4 (B) The member appointed by the President Pro Tempore  
5 shall serve a term of two (2) years;

6 (3)(A) One (1) voting member appointed by the Speaker of the  
7 House of Representatives.

8 (B) The member appointed by the Speaker of the House of  
9 Representatives shall serve a term of two (2) years;

10 (4)(A)(i) Five (5) voting members appointed by the Arkansas Bar  
11 Association.

12 (ii) As used in this section, "Arkansas Bar  
13 Association" includes a successor of the Arkansas Bar Association as  
14 certified to the Secretary of State by the Supreme Court.

15 (B)(i) Three (3) of the members appointed by the Arkansas  
16 Bar Association shall serve initial terms of six (6) years and subsequent  
17 appointments to those three (3) positions shall serve terms of six (6) years.

18 (ii) Two (2) of the members appointed by the  
19 Arkansas Bar Association shall serve initial terms of four (4) years and  
20 subsequent appointments to those two (2) positions shall serve terms of four  
21 (4) years.

22 (iii) The Arkansas Bar Association shall determine  
23 which of its initial appointments serve terms of six (6) years and which of  
24 its initial appointments serve four (4) years; and

25 (5) The Chief Justice of the Supreme Court or a Justice of the  
26 Supreme Court designated by the Chief Justice.

27 (B) The Chief Justice or the Chief Justice's designee  
28 shall:

29 (i) Serve as chair of the Judicial Nominating  
30 Commission; and

31 (ii) Be a nonvoting member of the commission.

32 (b)(1) Except as provided in subdivision (b)(2) of this section, a  
33 member of the commission may be reappointed by the appointing authority.

34 (2)(A) In no event shall an appointed member of the commission  
35 serve more than six (6) years in the aggregate on the commission.

36 (B) An appointment shall not be made if the aggregate

1 service on the commission of a proposed appointee would exceed six (6) years.

2 (c)(1) A person holding an elected office shall not be appointed to  
 3 the commission.

4 (2) A member of the commission shall not file as a candidate for  
 5 an elected office without first resigning from the commission.

6 (d) A member of the commission appointed under subdivisions (a)(1) -  
 7 (4) of this section shall not be eligible for appointment to the position of  
 8 Justice of the Supreme Court:

9 (1) During the term of the member's appointment to the  
 10 commission; and

11 (2) For two (2) years following the expiration of the member's  
 12 term.

13 (e)(1) A vacancy on the commission shall be filled by the appointing  
 14 authority.

15 (2) The commission shall notify the appointing authority of a  
 16 vacancy on the commission.

17 (3) The appointing authority shall appoint a replacement to fill  
 18 the vacancy on the commission within thirty (30) days of notification under  
 19 subdivision (e)(2) of this section.

20 (4) A member appointed to fill a vacancy on the commission shall  
 21 be eligible for reappointment to the commission subject to subdivision (b)(2)  
 22 of this section.

23 (5) An appointment to fill a vacancy on the commission that  
 24 occurs for any reason other than the expiration of a term shall be for the  
 25 balance of the unexpired term.

26 (6) A member of the commission shall serve without compensation,  
 27 but may receive reimbursement for necessary travel and expenses incurred  
 28 while performing duties as a member.

29 (f) A member appointed to the commission shall:

30 (1) Be knowledgeable of the role and characteristics that should  
 31 be exemplified by a member of the judiciary; and

32 (2) Agree to be bound by the code of ethical conduct adopted by  
 33 the commission under subdivision (h)(1) of this section.

34 (g) A majority of the members of the commission shall constitute a  
 35 quorum for the purpose of conducting the business of the commission.

36 (h) The commission shall determine:

1           (1)(A) The content of a code of ethical conduct that shall  
 2 govern the actions of each member as it relates to their role on the  
 3 commission.

4           (B) After adoption of the code of ethical conduct, the  
 5 commission shall provide appropriate training on the code of ethical conduct  
 6 to a newly appointed member of the commission before the member engages in  
 7 official duties as a member;

8           (2) The policies and procedures that govern the activities of  
 9 the commission, including without limitation:

10           (A) Establishing a system for selection of Justices of the  
 11 Supreme Court on the basis of merit;

12           (B) Assuring that commission proceedings are transparent  
 13 and open to the public, subject to the right of the commission to conduct  
 14 deliberations in a private executive session;

15           (C) Providing a uniform application form and process for  
 16 applicants seeking consideration for appointment to a position of Justice of  
 17 the Supreme Court;

18           (D) Conducting public interviews with applicants for  
 19 appointment to a position of Justice of the Supreme Court and providing an  
 20 opportunity for members of the public to submit comments to the commission  
 21 regarding an applicant; and

22           (E) Requiring an applicant to give consent for a  
 23 comprehensive background check; and

24           (3) Whether the qualifications of applicants to hold the  
 25 position of Justice of the Supreme Court have been met.

26  
 27           § 24. Filling of Justice of the Supreme Court vacancy.

28           (a) A vacancy in a Justice of the Supreme Court position which occurs  
 29 after the effective date of this section shall be filled in the following  
 30 manner:

31           (1)(A) When a vacancy in a Justice of the Supreme Court position  
 32 is certified to the Secretary of State by the Chief Justice of the Supreme  
 33 Court, the Judicial Nominating Commission, after giving notice to the public  
 34 of the vacancy, shall consider the qualifications of all persons submitting  
 35 timely applications under rules established by the commission.

36           (B) If a vacancy in a Justice of the Supreme Court

1 position will occur due to the expiration of the term of a Justice of the  
2 Supreme Court, the Chief Justice of the Supreme Court shall certify the  
3 vacancy to the Secretary of State no later than ninety (90) days before the  
4 end of the term scheduled to expire.

5 (C)(i) If a Justice of the Supreme Court delivers a  
6 written resignation to the Chief Justice of the Supreme Court, the Chief  
7 Justice shall certify to the Secretary of State within ten (10) days of the  
8 delivery of the writing that a vacancy will occur on the effective date of  
9 the resignation.

10 (ii) If the Chief Justice is resigning, the Chief  
11 Justice shall deliver a resignation in writing to the then most senior  
12 Justice of the Supreme Court, who shall certify to the Secretary of State  
13 within ten (10) days of the delivery of the writing that a vacancy in the  
14 position of Chief Justice will occur on the effective date of the  
15 resignation.

16 (D) If a vacancy in a Justice of the Supreme Court  
17 position occurs for any reason other than as described in subdivisions  
18 (a)(1)(B) and (a)(1)(C) of this section, the Chief Justice of the Supreme  
19 Court shall certify the vacancy to the Secretary of State within ten (10)  
20 days of the vacancy occurring.

21 (2) Within sixty (60) calendar days of the vacancy being  
22 certified under subdivision (a)(1) of this section or as soon thereafter as  
23 is reasonably practicable, the commission shall submit to the Governor the  
24 names of three (3) qualified applicants as nominees for the position of  
25 Justice of the Supreme Court; and

26 (3)(A) The Governor shall make an appointment from the three (3)  
27 nominees submitted under subdivision (a)(2) of this section and certify the  
28 appointment to the Secretary of State within thirty (30) days of receipt of  
29 the names of the nominees under subdivision (a)(2) of this section.

30 (B)(i) If the Governor fails to make an appointment from  
31 the three (3) nominees within thirty (30) days of receipt of the names of the  
32 nominees under subdivision (a)(2) of this section, the commission shall  
33 appoint one of the three (3) nominees in a special meeting called for that  
34 purpose.

35 (ii) The Chair of the Judicial Nominating Commission  
36 shall certify the appointment to the Secretary of State.

1 (b) A person appointed to fill a vacancy under subdivisions (a)(1)(B)  
 2 and (a)(1)(C) of this section shall not assume office until:

3 (1) The end of the term of the Justice of the Supreme Court whom  
 4 the appointee shall replace; or

5 (2) The resignation of the Justice of the Supreme Court whom the  
 6 appointee shall replace.

7 (c)(1) The term of a Justice of the Supreme Court appointed under this  
 8 section shall be fourteen (14) years except as otherwise provided in this  
 9 amendment.

10 (2) A Justice of the Supreme Court appointed to a fourteen-year  
 11 term under this section is not eligible for reappointment.

12  
 13 § 25. Vacancy occurring during term of office.

14 (a)(1) Except as provided in subsections (b) and (c) of this section,  
 15 a vacancy in a Justice of the Supreme Court position that occurs after  
 16 January 1, 2019, for any reason shall be filled as provided in § 24 of this  
 17 amendment.

18 (2) A person appointed to fill a vacancy occurring for any  
 19 reason other than the expiration of a term of office shall serve the  
 20 remainder of the term of office.

21 (b) If the vacant term remaining to be filled is two (2) years or  
 22 less, the nominee appointed is eligible at the conclusion of that remaining  
 23 term to apply to the Judicial Nominating Commission to be considered, with  
 24 other timely applicants, for a successive fourteen-year term.

25 (c) If a vacant term to be filled is more than two (2) years, the  
 26 nominee appointed may not seek appointment to a successive fourteen (14) year  
 27 term.

28  
 29 § 26. Implementation of amended terms of Justices of the Supreme  
 30 Court.

31 (a)(1) A Justice of the Supreme Court elected before January 1, 2019  
 32 shall continue in office until the expiration of his or her elected term.

33 (2) A Justice of the Supreme Court elected before January 1,  
 34 2019 is eligible to apply to the Judicial Nominating Commission to fill a  
 35 future vacancy in the position of Justice of the Supreme Court.

36 (b) To ensure that, after January 1, 2019, the term of one (1) or more

1 Justices of the Supreme Court will expire every two (2) years, the initial  
2 appointment of each Justice of the Supreme Court shall be implemented as  
3 follows:

4 (1)(A) The Justice of the Supreme Court elected to serve in  
5 Position 4 shall expire on January 1, 2021, and the person initially  
6 appointed to the position shall serve a term of eight (8) years.

7 (B) Persons subsequently appointed to Position 4 shall  
8 serve a term of fourteen (14) years.

9 (2)(A) The Justices of the Supreme Court elected to serve in  
10 Position 2, Position 6, and Position 7 shall expire on January 1, 2023, and  
11 the persons initially appointed to those positions shall draw lots so that  
12 one (1) person serves a term of eight (8) years, one (1) person serves a term  
13 of ten (10) years, and one (1) person serves a term of twelve (12) years.

14 (B) The chair of the Judicial Nominating Commission shall  
15 supervise the drawing of lots for length of terms under subdivision (b)(2)(A)  
16 of this section, which shall occur after persons are appointed as Justices of  
17 the Supreme Court to serve in Position 2, Position 6, and Position 7.

18 (C) Persons subsequently appointed to Position 2, Position  
19 6, and Position 7 shall serve a term of fourteen (14) years;

20 (3)(A) The terms of the Justices of the Supreme Court elected to  
21 serve in Position 1 and Position 5 shall expire on January 1, 2025, and the  
22 persons initially appointed to those positions shall draw lots so that one  
23 (1) person serves a term of twelve (12) years and one (1) person serves a  
24 term of fourteen (14) years.

25 (B) The chair shall supervise the drawing of lots for  
26 length of terms under subdivision (b)(3)(A) of this section, which shall  
27 occur after persons are appointed as Justices of the Supreme Court to serve  
28 in Position 1 and Position 5.

29 (C) The person appointed to serve in Position 1 shall  
30 serve as Chief Justice of the Supreme Court.

31 (D) Persons subsequently appointed to Position 1 and  
32 Position 5 shall serve a term of fourteen (14) years; and

33 (4) The term of the person elected to serve in Position 3 shall  
34 expire on January 1, 2027, and all persons subsequently appointed to that  
35 position shall serve a term of fourteen (14) years.

36 (c) A Justice of the Supreme Court appointed to a term under

1 subsection (b) of this section is not eligible for reappointment.

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3 SECTION 5. EFFECTIVE DATE. (a) This amendment shall become effective  
4 on January 1, 2019.

5 (b)(1) The initial members of the Judicial Nominating Commission shall  
6 be appointed and their appointment certified to the Secretary of State no  
7 later than March 1, 2019.

8 (2) The Chief Justice of the Supreme Court or the Chief  
9 Justice's designee shall call the initial meeting of the commission no later  
10 than April 1, 2019.

11

12 SECTION 6. BALLOT TITLE AND POPULAR NAME. When this amendment is  
13 submitted to the electors of this state on the general election ballot:

14 (1) The title of this joint resolution shall be the ballot  
15 title; and

16 (2) The popular name shall be, "An Amendment to the Arkansas  
17 Constitution Concerning the Process for Selecting Justices of the Supreme  
18 Court and Amending Provisions Concerning Service on the Supreme Court".

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