



813108

LEGISLATIVE ACTION

Senate

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House

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The Committee on Judiciary (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the resolving clause  
and insert:

That the following amendment to Section 10 of Article V of  
the State Constitution is agreed to and shall be submitted to  
the electors of this state for approval or rejection at the next  
general election or at an earlier special election specifically  
authorized by law for that purpose:

ARTICLE V

JUDICIARY

SECTION 10. Retention; election and terms.-

(a) Any justice or judge may qualify for retention by a



813108

14 vote of the electors in the general election next preceding the  
15 expiration of the justice's or judge's term in the manner  
16 prescribed by law. If a justice or judge is ineligible or fails  
17 to qualify for retention, a vacancy shall exist in that office  
18 upon the expiration of the term being served by the justice or  
19 judge. When a justice or judge so qualifies, the ballot shall  
20 read substantially as follows: "Shall Justice (or Judge)  
21 ...(name of justice or judge)... of the ...(name of the  
22 court)... be retained in office?" If a majority of the qualified  
23 electors voting within the territorial jurisdiction of the court  
24 vote to retain, the justice or judge shall be retained for a  
25 term of six years. The term of the justice or judge retained  
26 shall commence on the first Tuesday after the first Monday in  
27 January following the general election. If a majority of the  
28 qualified electors voting within the territorial jurisdiction of  
29 the court vote to not retain, a vacancy shall exist in that  
30 office upon the expiration of the term being served by the  
31 justice or judge. If at least 40 percent of the qualified  
32 electors within the territorial jurisdiction of the court vote  
33 not to retain a justice or judge, the Governor, with the advice  
34 and consent of a two-thirds majority of the Senate, may declare  
35 a vacancy of that office upon the expiration of the term being  
36 served by the justice or judge.

37 (b) (1) The election of circuit judges shall be preserved  
38 notwithstanding the provisions of subsection (a) unless a  
39 majority of those voting in the jurisdiction of that circuit  
40 approves a local option to select circuit judges by merit  
41 selection and retention rather than by election. The election of  
42 circuit judges shall be by a vote of the qualified electors



813108

43 within the territorial jurisdiction of the court.

44 (2) The election of county court judges shall be preserved  
45 notwithstanding the provisions of subsection (a) unless a  
46 majority of those voting in the jurisdiction of that county  
47 approves a local option to select county judges by merit  
48 selection and retention rather than by election. The election of  
49 county court judges shall be by a vote of the qualified electors  
50 within the territorial jurisdiction of the court.

51 (3)a. A vote to exercise a local option to select circuit  
52 court judges and county court judges by merit selection and  
53 retention rather than by election shall be held in each circuit  
54 and county at the general election in the year 2000. If a vote  
55 to exercise this local option fails in a vote of the electors,  
56 such option shall not again be put to a vote of the electors of  
57 that jurisdiction until the expiration of at least two years.

58 b. After the year 2000, a circuit may initiate the local  
59 option for merit selection and retention or the election of  
60 circuit judges, whichever is applicable, by filing with the  
61 custodian of state records a petition signed by the number of  
62 electors equal to at least ten percent of the votes cast in the  
63 circuit in the last preceding election in which presidential  
64 electors were chosen.

65 c. After the year 2000, a county may initiate the local  
66 option for merit selection and retention or the election of  
67 county court judges, whichever is applicable, by filing with the  
68 supervisor of elections a petition signed by the number of  
69 electors equal to at least ten percent of the votes cast in the  
70 county in the last preceding election in which presidential  
71 electors were chosen. The terms of circuit judges and judges of



813108

72 county courts shall be for six years.

73 BE IT FURTHER RESOLVED that the following statement be  
74 placed on the ballot:

75 CONSTITUTIONAL AMENDMENT

76 ARTICLE V, SECTION 10

77 BROADER PUBLIC SUPPORT FOR RETENTION OF JUSTICES AND  
78 JUDGES.—This proposed amendment increases the threshold of  
79 public support needed to retain justices and judges chosen by  
80 merit selection and retention. Under current law, a justice or  
81 judge who appears on the ballot in a retention election is  
82 retained if a simple majority of electors vote to retain the  
83 justice or judge. This amendment provides that a justice or  
84 judge who appears on the ballot in a retention election is  
85 retained if at least 40 percent of qualified electors vote to  
86 retain the justice or judge. This amendment also authorizes the  
87 Governor, with the advice and consent of a two-thirds majority  
88 of the Senate, to declare a vacancy of the justice or judge's  
89 office upon the expiration of his or her term. The amendment  
90 does not apply to judges who are chosen by election and not by  
91 merit selection and retention. This amendment takes effect  
92 immediately upon approval by the voters and applies to retention  
93 elections beginning with the 2012 General Election.

94  
95 BE IT FURTHER RESOLVED that the following statement be  
96 placed on the ballot if a court declares the preceding statement  
97 defective and the decision of the court is not reversed:

98 CONSTITUTIONAL AMENDMENT

99 ARTICLE V, SECTION 10

100 RETENTION OF JUSTICES AND JUDGES.—Currently, retention of a



813108

101 justice or judge who seeks a new 6-year term requires a simple  
102 majority vote of the qualified electors voting within the  
103 territorial jurisdiction of the court. This amendment increases  
104 the requirement to at least 40 percent of those qualified  
105 electors. The amendment takes effect as soon as it is approved  
106 by the electors, and it applies to any vote to retain a justice  
107 or judge on the ballot in the same general election.  
108

109 BE IT FURTHER RESOLVED that the following statement be  
110 placed on the ballot if a court declares the preceding statement  
111 defective and the decision of the court is not reversed:

112 CONSTITUTIONAL AMENDMENT

113 ARTICLE V, SECTION 10

114 INCREASING THE THRESHOLD REQUIRED TO RETAIN JUSTICES AND  
115 JUDGES.—Proposing an amendment to the State Constitution to  
116 increase the threshold required to retain justices and judges.  
117 Under current law, a justice or judge appears on the ballot at  
118 the end of each term of office for a retention election. If a  
119 majority of the votes cast are for retention, the justice or  
120 judge continues in office, but if a majority votes not to  
121 retain, the justice or judge is removed from office at the end  
122 of the term of office. This amendment changes the threshold to  
123 at least 40 percent; that is, of the votes cast, 40 percent or  
124 more would have to be votes to retain the justice or judge in  
125 order for the justice or judge to retain his or her office for  
126 another term. This provision will apply to all state court  
127 appellate justices and judges, but will apply only to trial  
128 court judges in your judicial circuit or your county if your  
129 circuit or county has approved merit selection and retention;



813108

130 otherwise, this proposed amendment will not affect your circuit  
131 court judges or county court judges, respectively. The amendment  
132 applies immediately to any justice or judge who is on the ballot  
133 for a retention vote in this election.

134

135 BE IT FURTHER RESOLVED that the following statement be  
136 placed on the ballot if a court declares the preceding statement  
137 defective and the decision of the court is not reversed:

138

CONSTITUTIONAL AMENDMENT

139

ARTICLE V, SECTION 10

140

INCREASING THE VOTE REQUIRED TO RETAIN A JUSTICE OR JUDGE.—

141

The State Constitution currently provides that a justice or  
142 judge qualifies to be retained in office for an additional term  
143 by receiving the votes of a majority of the qualified electors  
144 voting within the court's jurisdiction in an election before the  
145 term of the justice or judge ends. This proposed amendment  
146 raises the required votes for retention from a majority of the  
147 qualified electors voting within the court's jurisdiction to at  
148 least 40 percent. If more than 40 percent of qualified electors  
149 vote against retention, the Governor, with the advice and  
150 consent of a two-thirds majority of the Senate, may declare a  
151 vacancy in the office when the justice's or judge's term  
152 expires. The proposed amendment takes effect immediately and  
153 applies beginning with any judicial retention vote that is  
154 occurring in this same general election.

155

156 ===== T I T L E A M E N D M E N T =====

157 And the title is amended as follows:

158 Delete everything before the resolving clause



813108

159 and insert:

160                   A bill to be entitled  
161           A joint resolution proposing an amendment to Section  
162           10 of Article V of the State Constitution to increase  
163           the vote required to retain a justice or judge in a  
164           judicial office and to provide for the increased vote  
165           requirement to apply beginning with retention  
166           elections during the 2012 General Election.