1 # RESOLUTION PROVIDING FOR CONTESTED

2 # JUDICIAL ELECTIONS

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 ## Sponsor: David L. Thomas

6 **This joint resolution of the Legislature proposes to amend the Utah Constitution to**

7 **modify the process of selecting justices and judges for courts of record. The joint**

8 **resolution eliminates the process of selecting justices and judges by governor**

9 **appointment from a list provided by the Judicial Nominating Commission and replaces**

10 **that selection process with nonpartisan election of justices and judges. The joint**

11 **resolution directs the lieutenant governor to submit this proposal to voters and provides**

12 **an effective date.**

13 This resolution proposes to change the Utah Constitution as follows:

14 AMENDS:

15 **ARTICLE VIII, SECTION 8**

16 REPEALS:

17 **ARTICLE VIII, SECTION 9**

18 *Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each*

19 *of the two houses voting in favor thereof:*

20 Section 1. It is proposed to amend Utah Constitution Article VIII, Section 8, to read:

21 **Article VIII, Section 8.   [Vacancies -- Nominating commissions -- Senate**

22 **approval.]**

23 (1) Each justice or judge of a court of record shall be elected to a four-year term at a

24 regular general election, as provided by statute. The election shall be nonpartisan. Each judge

25 for a court with geographic divisions shall be elected by voters of the geographic division in

26 which the judge will serve. Each candidate for judicial office at an election under this section

27 shall have the qualifications for that office as prescribed in Article VIII, Section 7.

28   [(1) When] (2) If a vacancy occurs in a court of record <u>before expiration of the term of</u>

29   <u>office</u>, the governor shall [f̶i̶l̶l̶ ̶t̶h̶e̶ ̶v̶a̶c̶a̶n̶c̶y̶ ̶b̶y̶ ̶a̶p̶p̶o̶i̶n̶t̶m̶e̶n̶t̶ ̶f̶r̶o̶m̶ ̶a̶ ̶l̶i̶s̶t̶ ̶o̶f̶ ̶a̶t̶ ̶l̶e̶a̶s̶t̶ ̶t̶h̶r̶e̶e̶ ̶n̶o̶m̶i̶n̶e̶e̶s̶

30   c̶e̶r̶t̶i̶f̶i̶e̶d̶ ̶t̶o̶ ̶t̶h̶e̶ ̶g̶o̶v̶e̶r̶n̶o̶r̶ ̶b̶y̶ ̶t̶h̶e̶ ̶J̶u̶d̶i̶c̶i̶a̶l̶ ̶N̶o̶m̶i̶n̶a̶t̶i̶n̶g̶ ̶C̶o̶m̶m̶i̶s̶s̶i̶o̶n̶ ̶h̶a̶v̶i̶n̶g̶ ̶a̶u̶t̶h̶o̶r̶i̶t̶y̶ ̶o̶v̶e̶r̶ ̶t̶h̶e̶

31   v̶a̶c̶a̶n̶c̶y̶.̶ ̶ ̶T̶h̶e̶ ̶g̶o̶v̶e̶r̶n̶o̶r̶ ̶s̶h̶a̶l̶l̶ ̶f̶i̶l̶l̶ ̶t̶h̶e̶ ̶v̶a̶c̶a̶n̶c̶y̶ ̶w̶i̶t̶h̶i̶n̶ ̶3̶0̶ ̶d̶a̶y̶s̶ ̶a̶f̶t̶e̶r̶ ̶r̶e̶c̶e̶i̶v̶i̶n̶g̶ ̶t̶h̶e̶ ̶l̶i̶s̶t̶ ̶o̶f̶

32   n̶o̶m̶i̶n̶e̶e̶s̶.̶ ̶ ̶I̶f̶ ̶t̶h̶e̶ ̶g̶o̶v̶e̶r̶n̶o̶r̶ ̶f̶a̶i̶l̶s̶ ̶t̶o̶ ̶f̶i̶l̶l̶ ̶t̶h̶e̶ ̶v̶a̶c̶a̶n̶c̶y̶ ̶w̶i̶t̶h̶i̶n̶ ̶t̶h̶e̶ ̶t̶i̶m̶e̶ ̶p̶r̶e̶s̶c̶r̶i̶b̶e̶d̶,̶ ̶t̶h̶e̶ ̶c̶h̶i̶e̶f̶ ̶j̶u̶s̶t̶i̶c̶e̶

33   o̶f̶ ̶t̶h̶e̶ ̶S̶u̶p̶r̶e̶m̶e̶ ̶C̶o̶u̶r̶t̶ ̶s̶h̶a̶l̶l̶ ̶w̶i̶t̶h̶i̶n̶ ̶2̶0̶ ̶d̶a̶y̶s̶ ̶m̶a̶k̶e̶ ̶t̶h̶e̶ ̶a̶p̶p̶o̶i̶n̶t̶m̶e̶n̶t̶ ̶f̶r̶o̶m̶ ̶t̶h̶e̶ ̶l̶i̶s̶t̶ ̶o̶f̶ ̶n̶o̶m̶i̶n̶e̶e̶s̶.̶]<u>,</u>

34   <u>with the advice and consent of the Senate, appoint a person to serve the remaining unexpired</u>

35   <u>term.</u>

36   [(2) The Legislature by statute shall provide for the nominating commissions'

37   c̶o̶m̶p̶o̶s̶i̶t̶i̶o̶n̶ ̶a̶n̶d̶ ̶p̶r̶o̶c̶e̶d̶u̶r̶e̶s̶.̶ ̶ ̶N̶o̶ ̶m̶e̶m̶b̶e̶r̶ ̶o̶f̶ ̶t̶h̶e̶ ̶L̶e̶g̶i̶s̶l̶a̶t̶u̶r̶e̶ ̶m̶a̶y̶ ̶s̶e̶r̶v̶e̶ ̶a̶s̶ ̶a̶ ̶m̶e̶m̶b̶e̶r̶ ̶o̶f̶,̶ ̶n̶o̶r̶

38   m̶a̶y̶ ̶t̶h̶e̶ ̶L̶e̶g̶i̶s̶l̶a̶t̶u̶r̶e̶ ̶a̶p̶p̶o̶i̶n̶t̶ ̶m̶e̶m̶b̶e̶r̶s̶ ̶t̶o̶,̶ ̶a̶n̶y̶ ̶J̶u̶d̶i̶c̶i̶a̶l̶ ̶N̶o̶m̶i̶n̶a̶t̶i̶n̶g̶ ̶C̶o̶m̶m̶i̶s̶s̶i̶o̶n̶.̶]

39   [(3) The Senate shall consider and render a decision on each judicial appointment

40   w̶i̶t̶h̶i̶n̶ ̶6̶0̶ ̶d̶a̶y̶s̶ ̶o̶f̶ ̶t̶h̶e̶ ̶d̶a̶t̶e̶ ̶o̶f̶ ̶a̶p̶p̶o̶i̶n̶t̶m̶e̶n̶t̶.̶ ̶ ̶I̶f̶ ̶n̶e̶c̶e̶s̶s̶a̶r̶y̶,̶ ̶t̶h̶e̶ ̶S̶e̶n̶a̶t̶e̶ ̶s̶h̶a̶l̶l̶ ̶c̶o̶n̶v̶e̶n̶e̶ ̶i̶t̶s̶e̶l̶f̶ ̶i̶n̶

41   e̶x̶t̶r̶a̶o̶r̶d̶i̶n̶a̶r̶y̶ ̶s̶e̶s̶s̶i̶o̶n̶ ̶f̶o̶r̶ ̶t̶h̶e̶ ̶p̶u̶r̶p̶o̶s̶e̶ ̶o̶f̶ ̶c̶o̶n̶s̶i̶d̶e̶r̶i̶n̶g̶ ̶j̶u̶d̶i̶c̶i̶a̶l̶ ̶a̶p̶p̶o̶i̶n̶t̶m̶e̶n̶t̶s̶.̶ ̶ ̶T̶h̶e̶ ̶a̶p̶p̶o̶i̶n̶t̶m̶e̶n̶t̶

42   s̶h̶a̶l̶l̶ ̶b̶e̶ ̶e̶f̶f̶e̶c̶t̶i̶v̶e̶ ̶u̶p̶o̶n̶ ̶a̶p̶p̶r̶o̶v̶a̶l̶ ̶o̶f̶ ̶a̶ ̶m̶a̶j̶o̶r̶i̶t̶y̶ ̶o̶f̶ ̶a̶l̶l̶ ̶m̶e̶m̶b̶e̶r̶s̶ ̶o̶f̶ ̶t̶h̶e̶ ̶S̶e̶n̶a̶t̶e̶.̶ ̶ ̶I̶f̶ ̶t̶h̶e̶ ̶S̶e̶n̶a̶t̶e̶ ̶f̶a̶i̶l̶s̶

43   t̶o̶ ̶a̶p̶p̶r̶o̶v̶e̶ ̶t̶h̶e̶ ̶a̶p̶p̶o̶i̶n̶t̶m̶e̶n̶t̶,̶ ̶t̶h̶e̶ ̶o̶f̶f̶i̶c̶e̶ ̶s̶h̶a̶l̶l̶ ̶b̶e̶ ̶c̶o̶n̶s̶i̶d̶e̶r̶e̶d̶ ̶v̶a̶c̶a̶n̶t̶ ̶a̶n̶d̶ ̶a̶ ̶n̶e̶w̶ ̶n̶o̶m̶i̶n̶a̶t̶i̶n̶g̶

44   p̶r̶o̶c̶e̶s̶s̶ ̶s̶h̶a̶l̶l̶ ̶c̶o̶m̶m̶e̶n̶c̶e̶.̶]

45   [(4) Selection of judges shall be based solely upon consideration of fitness for office

46   w̶i̶t̶h̶o̶u̶t̶ ̶r̶e̶g̶a̶r̶d̶ ̶t̶o̶ ̶a̶n̶y̶ ̶p̶a̶r̶t̶i̶s̶a̶n̶ ̶p̶o̶l̶i̶t̶i̶c̶a̶l̶ ̶c̶o̶n̶s̶i̶d̶e̶r̶a̶t̶i̶o̶n̶.̶]

47   Section 2. It is proposed to repeal Utah Constitution Article VIII, Section 9:

48   **Article VIII, Section 9.   [Judicial retention elections.]**

49   [E̶a̶c̶h̶ ̶a̶p̶p̶o̶i̶n̶t̶e̶e̶ ̶t̶o̶ ̶a̶ ̶c̶o̶u̶r̶t̶ ̶o̶f̶ ̶r̶e̶c̶o̶r̶d̶ ̶s̶h̶a̶l̶l̶ ̶b̶e̶ ̶s̶u̶b̶j̶e̶c̶t̶ ̶t̶o̶ ̶a̶n̶ ̶u̶n̶o̶p̶p̶o̶s̶e̶d̶ ̶r̶e̶t̶e̶n̶t̶i̶o̶n̶ ̶e̶l̶e̶c̶t̶i̶o̶n̶

50   a̶t̶ ̶t̶h̶e̶ ̶f̶i̶r̶s̶t̶ ̶g̶e̶n̶e̶r̶a̶l̶ ̶e̶l̶e̶c̶t̶i̶o̶n̶ ̶h̶e̶l̶d̶ ̶m̶o̶r̶e̶ ̶t̶h̶a̶n̶ ̶t̶h̶r̶e̶e̶ ̶y̶e̶a̶r̶s̶ ̶a̶f̶t̶e̶r̶ ̶a̶p̶p̶o̶i̶n̶t̶m̶e̶n̶t̶.̶ ̶ ̶F̶o̶l̶l̶o̶w̶i̶n̶g̶ ̶i̶n̶i̶t̶i̶a̶l̶

51   v̶o̶t̶e̶r̶ ̶a̶p̶p̶r̶o̶v̶a̶l̶,̶ ̶e̶a̶c̶h̶ ̶S̶u̶p̶r̶e̶m̶e̶ ̶C̶o̶u̶r̶t̶ ̶j̶u̶s̶t̶i̶c̶e̶ ̶e̶v̶e̶r̶y̶ ̶t̶e̶n̶t̶h̶ ̶y̶e̶a̶r̶,̶ ̶a̶n̶d̶ ̶e̶a̶c̶h̶ ̶j̶u̶d̶g̶e̶ ̶o̶f̶ ̶o̶t̶h̶e̶r̶ ̶c̶o̶u̶r̶t̶s̶ ̶o̶f̶

52   r̶e̶c̶o̶r̶d̶ ̶e̶v̶e̶r̶y̶ ̶s̶i̶x̶t̶h̶ ̶y̶e̶a̶r̶,̶ ̶s̶h̶a̶l̶l̶ ̶b̶e̶ ̶s̶u̶b̶j̶e̶c̶t̶ ̶t̶o̶ ̶a̶n̶ ̶u̶n̶o̶p̶p̶o̶s̶e̶d̶ ̶r̶e̶t̶e̶n̶t̶i̶o̶n̶ ̶e̶l̶e̶c̶t̶i̶o̶n̶ ̶a̶t̶ ̶t̶h̶e̶ ̶c̶o̶r̶r̶e̶s̶p̶o̶n̶d̶i̶n̶g̶

53   g̶e̶n̶e̶r̶a̶l̶ ̶e̶l̶e̶c̶t̶i̶o̶n̶.̶ ̶ ̶J̶u̶d̶i̶c̶i̶a̶l̶ ̶r̶e̶t̶e̶n̶t̶i̶o̶n̶ ̶e̶l̶e̶c̶t̶i̶o̶n̶s̶ ̶s̶h̶a̶l̶l̶ ̶b̶e̶ ̶h̶e̶l̶d̶ ̶o̶n̶ ̶a̶ ̶n̶o̶n̶p̶a̶r̶t̶i̶s̶a̶n̶ ̶b̶a̶l̶l̶o̶t̶ ̶i̶n̶ ̶a̶ ̶m̶a̶n̶n̶e̶r̶

54   p̶r̶o̶v̶i̶d̶e̶d̶ ̶b̶y̶ ̶s̶t̶a̶t̶u̶t̶e̶.̶ ̶ ̶I̶f̶ ̶g̶e̶o̶g̶r̶a̶p̶h̶i̶c̶ ̶d̶i̶v̶i̶s̶i̶o̶n̶s̶ ̶a̶r̶e̶ ̶p̶r̶o̶v̶i̶d̶e̶d̶ ̶f̶o̶r̶ ̶a̶n̶y̶ ̶c̶o̶u̶r̶t̶ ̶o̶f̶ ̶r̶e̶c̶o̶r̶d̶,̶ ̶t̶h̶e̶ ̶j̶u̶d̶g̶e̶s̶ ̶o̶f̶

55   t̶h̶o̶s̶e̶ ̶c̶o̶u̶r̶t̶s̶ ̶s̶h̶a̶l̶l̶ ̶s̶t̶a̶n̶d̶ ̶f̶o̶r̶ ̶r̶e̶t̶e̶n̶t̶i̶o̶n̶ ̶e̶l̶e̶c̶t̶i̶o̶n̶ ̶o̶n̶l̶y̶ ̶i̶n̶ ̶t̶h̶e̶ ̶g̶e̶o̶g̶r̶a̶p̶h̶i̶c̶ ̶d̶i̶v̶i̶s̶i̶o̶n̶ ̶t̶o̶ ̶w̶h̶i̶c̶h̶ ̶t̶h̶e̶y̶ ̶a̶r̶e̶

56   s̶e̶l̶e̶c̶t̶e̶d̶.̶]

57   Section 3. **Submittal to voters.**

58   <u>The lieutenant governor is directed to submit this proposed amendment to the voters of</u>

59   the state at the next regular general election in the manner provided by law.

60   Section 4. **Effective date.**

61   If the amendment proposed by this joint resolution is approved by a majority of those

62   voting on it at the next regular general election, the amendment shall take effect on January 1,

63   2005.

Legislative Review Note
        as of 12-6-02 11:24 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

                                                Office of Legislative Research and General Counsel

State Impact

It is estimated that publication and distribution costs to put this resolution on the ballot would be $11,500 from the General Fund.

	FY 04 Approp.	FY 05 Approp.	FY 04 Revenue	FY 05 Revenue
General Fund	$0	$11,500	$0	$0
TOTAL	**$0**	**$11,500**	**$0**	**$0**

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst