

By the Committee on Judiciary; and Senator Cowin

308-2159-02

1                   Senate Joint Resolution No.\_\_\_\_  
 2           A joint resolution proposing an amendment to  
 3           Section 12 of Article V and the creation of  
 4           Section 26 of Article XII of the State  
 5           Constitution relating to the Judicial  
 6           Qualifications Commission.

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8 Be It Resolved by the Legislature of the State of Florida:

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10           That the following amendment to Section 12 of Article V  
 11 and the creation of Section 26 of Article XII of the State  
 12 Constitution are agreed to and shall be submitted to the  
 13 electors of this state for approval or rejection at the  
 14 general election to be held in November 2002:

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16                                   ARTICLE V  
 17                                   JUDICIARY

18           SECTION 12. Discipline; removal and retirement.--

19           (a) JUDICIAL QUALIFICATIONS COMMISSION.--A judicial  
20 qualifications commission is created.

21           (1) There shall be a judicial qualifications  
 22 commission vested with jurisdiction to investigate and  
 23 recommend to the Supreme Court of Florida the removal from  
 24 office of any justice or judge whose conduct, during term of  
 25 office or otherwise occurring on or after November 1, 1966,  
 26 (without regard to the effective date of this section)  
 27 demonstrates a present unfitness to hold office, and to  
 28 investigate and recommend the discipline of a justice or judge  
 29 whose conduct, during term of office or otherwise occurring on  
 30 or after November 1, 1966 (without regard to the effective  
 31 date of this section), warrants such discipline. For purposes

1 of this section, discipline is defined as any or all of the  
2 following: reprimand, fine, suspension with or without pay, or  
3 lawyer discipline. The commission shall have jurisdiction over  
4 justices and judges regarding allegations that misconduct  
5 occurred before or during service as a justice or judge if a  
6 complaint is made no later than one year following service as  
7 a justice or judge. The commission shall have jurisdiction  
8 regarding allegations of incapacity during service as a  
9 justice or judge. The commission shall be composed of:  
10       a. Two judges of district courts of appeal selected by  
11 the judges of those courts, two circuit judges selected by the  
12 judges of the circuit courts and two judges of county courts  
13 selected by the judges of those courts;  
14       b. Four electors who reside in the state, who are  
15 members of the bar of Florida, and who shall be chosen by the  
16 governing body of the bar of Florida; and  
17       c. Five electors who reside in the state, who have  
18 never held judicial office or been members of the bar of  
19 Florida, and who shall be appointed by the governor.  
20       (2) The members of the judicial qualifications  
21 commission shall serve staggered terms, not to exceed six  
22 years, as prescribed by general law. No member of the  
23 commission except a judge shall be eligible for state judicial  
24 office while acting as a member of the commission and for a  
25 period of two years thereafter. No member of the commission  
26 shall hold office in a political party or participate in any  
27 campaign for judicial office or hold public office; provided  
28 that a judge may campaign for judicial office and hold that  
29 office. The commission shall elect one of its members as its  
30 chairperson.  
31

1           (3) Members of the judicial qualifications commission  
2 not subject to impeachment shall be subject to removal from  
3 the commission pursuant to the provisions of Article IV,  
4 Section 7, Florida Constitution.

5           (4) The commission shall adopt rules regulating its  
6 proceedings, the filling of vacancies by the appointing  
7 authorities, the disqualification of members, the rotation of  
8 members between the panels, and the temporary replacement of  
9 disqualified or incapacitated members. The commission's  
10 rules, or any part thereof, may be repealed by general law  
11 enacted by a majority vote of the membership of each house of  
12 the legislature, or by the supreme court, five justices  
13 concurring. The commission shall have power to issue  
14 subpoenas. Until formal charges against a justice or judge are  
15 filed by the investigative panel with the clerk of the supreme  
16 court of Florida all proceedings by or before the commission  
17 shall be confidential; provided, however, upon a finding of  
18 probable cause and the filing by the investigative panel with  
19 said clerk of such formal charges against a justice or judge  
20 such charges and all further proceedings before the commission  
21 shall be public. Upon a finding of no probable cause, the  
22 records and proceedings shall be public unless exempted by  
23 general law.

24           (5) The commission shall have access to all  
25 information from all executive, legislative and judicial  
26 agencies, including grand juries, subject to the rules of the  
27 commission. At any time, on request of the speaker of the  
28 house of representatives or the governor, the commission shall  
29 make available all information in the possession of the  
30 commission for use in consideration of impeachment or  
31 suspension, respectively.

1           (b) PANELS.--The commission shall be divided into an  
2 investigative panel and a hearing panel as established by rule  
3 of the commission. The investigative panel is vested with the  
4 jurisdiction to receive or initiate complaints, conduct  
5 investigations, dismiss complaints, and upon a vote of a  
6 simple majority of the panel submit formal charges to the  
7 hearing panel. The hearing panel is vested with the authority  
8 to receive and hear formal charges from the investigative  
9 panel and upon a two-thirds vote of the panel recommend to the  
10 supreme court the removal of a justice or judge or the  
11 involuntary retirement of a justice or judge for any permanent  
12 disability that seriously interferes with the performance of  
13 judicial duties. Upon a simple majority vote of the membership  
14 of the hearing panel, the panel may recommend to the supreme  
15 court that the justice or judge be subject to appropriate  
16 discipline.

17           (c) SUPREME COURT.--The supreme court shall receive  
18 recommendations from the judicial qualifications commission's  
19 hearing panel.

20           (1) The supreme court may accept, reject, or modify in  
21 whole or in part the findings, conclusions, and  
22 recommendations of the commission and it may order that the  
23 justice or judge be subjected to appropriate discipline, or be  
24 removed from office with termination of compensation for  
25 willful or persistent failure to perform judicial duties or  
26 for other conduct unbecoming a member of the judiciary  
27 demonstrating a present unfitness to hold office, or be  
28 involuntarily retired for any permanent disability that  
29 seriously interferes with the performance of judicial duties.  
30 Malafides, scienter or moral turpitude on the part of a  
31 justice or judge shall not be required for removal from office

1 of a justice or judge whose conduct demonstrates a present  
2 unfitness to hold office. After the filing of a formal  
3 proceeding and upon request of the investigative panel, the  
4 supreme court may suspend the justice or judge from office,  
5 with or without compensation, pending final determination of  
6 the inquiry.

7 (2) The supreme court may award costs to the  
8 prevailing party.

9 (d) The power of removal conferred by this section  
10 shall be both alternative and cumulative to the power of  
11 impeachment.

12 (e) Notwithstanding any of the foregoing provisions of  
13 this section, if the person who is the subject of proceedings  
14 by the judicial qualifications commission is a justice of the  
15 supreme court of Florida all justices of such court  
16 automatically shall be disqualified to sit as justices of such  
17 court with respect to all proceedings therein concerning such  
18 person and the supreme court for such purposes shall be  
19 composed of a panel consisting of the seven chief judges of  
20 the judicial circuits of the state of Florida most senior in  
21 tenure of judicial office as circuit judge. For purposes of  
22 determining seniority of such circuit judges in the event  
23 there be judges of equal tenure in judicial office as circuit  
24 judge the judge or judges from the lower numbered circuit or  
25 circuits shall be deemed senior. In the event any such chief  
26 circuit judge is under investigation by the judicial  
27 qualifications commission or is otherwise disqualified or  
28 unable to serve on the panel, the next most senior chief  
29 circuit judge or judges shall serve in place of such  
30 disqualified or disabled chief circuit judge.

31 ~~(f) SCHEDULE TO SECTION 12.~~

1           ~~(1) Except to the extent inconsistent with the~~  
2 ~~provisions of this section, all provisions of law and rules of~~  
3 ~~court in force on the effective date of this article shall~~  
4 ~~continue in effect until superseded in the manner authorized~~  
5 ~~by the constitution.~~

6           ~~(2) After this section becomes effective and until~~  
7 ~~adopted by rule of the commission consistent with it:~~

8           ~~a. The commission shall be divided, as determined by~~  
9 ~~the chairperson, into one investigative panel and one hearing~~  
10 ~~panel to meet the responsibilities set forth in this section.~~

11           ~~b. The investigative panel shall be composed of:~~

12           ~~1. Four judges,~~

13           ~~2. Two members of the bar of Florida, and~~

14           ~~3. Three non-lawyers.~~

15           ~~c. The hearing panel shall be composed of:~~

16           ~~1. Two judges,~~

17           ~~2. Two members of the bar of Florida, and~~

18           ~~3. Two non-lawyers.~~

19           ~~d. Membership on the panels may rotate in a manner~~  
20 ~~determined by the rules of the commission provided that no~~  
21 ~~member shall vote as a member of the investigative and hearing~~  
22 ~~panel on the same proceeding.~~

23           ~~e. The commission shall hire separate staff for each~~  
24 ~~panel.~~

25           ~~f. The members of the commission shall serve for~~  
26 ~~staggered terms of six years.~~

27           ~~g. The terms of office of the present members of the~~  
28 ~~judicial qualifications commission shall expire upon the~~  
29 ~~effective date of the amendments to this section approved by~~  
30 ~~the legislature during the regular session of the legislature~~

31

1 ~~in 1996 and new members shall be appointed to serve the~~  
2 ~~following staggered terms:~~

3       1. ~~Group I.--The terms of five members, composed of~~  
4 ~~two electors as set forth in s. 12(a)(1)c. of Article V, one~~  
5 ~~member of the bar of Florida as set forth in s. 12(a)(1)b. of~~  
6 ~~Article V, one judge from the district courts of appeal and~~  
7 ~~one circuit judge as set forth in s. 12(a)(1)a. of Article V,~~  
8 ~~shall expire on December 31, 1998.~~

9       2. ~~Group II.--The terms of five members, composed of~~  
10 ~~one elector as set forth in s. 12(a)(1)c. of Article V, two~~  
11 ~~members of the bar of Florida as set forth in s. 12(a)(1)b. of~~  
12 ~~Article V, one circuit judge and one county judge as set forth~~  
13 ~~in s. 12(a)(1)a. of Article V shall expire on December 31,~~  
14 ~~2000.~~

15       3. ~~Group III.--The terms of five members, composed of~~  
16 ~~two electors as set forth in s. 12(a)(1)c. of Article V, one~~  
17 ~~member of the bar of Florida as set forth in s. 12(a)(1)b.,~~  
18 ~~one judge from the district courts of appeal and one county~~  
19 ~~judge as set forth in s. 12(a)(1)a. of Article V, shall expire~~  
20 ~~on December 31, 2002.~~

21       h. ~~An appointment to fill a vacancy of the commission~~  
22 ~~shall be for the remainder of the term.~~

23       i. ~~Selection of members by district courts of appeal~~  
24 ~~judges, circuit judges, and county court judges, shall be by~~  
25 ~~no less than a majority of the members voting at the~~  
26 ~~respective courts' conferences. Selection of members by the~~  
27 ~~board of governors of the bar of Florida shall be by no less~~  
28 ~~than a majority of the board.~~

29       j. ~~The commission shall be entitled to recover the~~  
30 ~~costs of investigation and prosecution, in addition to any~~  
31 ~~penalty levied by the supreme court.~~

1           ~~k. The compensation of members and referees shall be~~  
2 ~~the travel expenses or transportation and per diem allowance~~  
3 ~~as provided by general law.~~

4  
5                                   ARTICLE XII

6   SCHEDULE

7           SECTION 26. Judicial qualifications commission public  
8 records.--The amendment to Section 12(a)(4) of Article V  
9 relating to public records and proceedings of the judicial  
10 qualifications commission shall take effect July 1, 2003.

11           BE IT FURTHER RESOLVED that the following statement be  
12 placed on the ballot:

13                                   CONSTITUTIONAL AMENDMENT

14           ARTICLE V, SECTION 12; ARTICLE XII, SECTION 26

15           JUDICIAL QUALIFICATIONS; COMMISSION PROCEEDINGS AND  
16 RECORDS.--Proposes to make all records and proceedings of the  
17 Judicial Qualifications Commission public upon a finding of no  
18 probable cause, effective July 1, 2003, unless exempted by  
19 general law. Proposes to delete the schedule provisions of  
20 Article V, Section 12, which provide a temporary schedule of  
21 the organization of the commission.



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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 162

The committee substitute replaces the current language of the bill with revision of Article V, s. 12 of the Florida Constitution relating to the records of the Judicial Qualifications Commission. The language is amended to provide that when the Judicial Qualifications Commission investigates a judicial officer and finds no probable cause for further proceedings the records and proceedings of the commission will be public unless exempted by general law.

The constitutional amendment also removes the schedule for implementation of Article V, s. 12 that was adopted at the time of the original adoption of the section. This language is no longer necessary as the section has been implemented.