

By Senator Hays

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Senate Joint Resolution

A joint resolution proposing an amendment to Section 12 of Article V of the State Constitution to require that certain proceedings, records, and materials of the Judicial Qualifications Commission be open to the public and to require the commission to notify the Speaker of the House of Representatives of complaints received or initiated, investigations conducted, and complaints concluded.

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

That the following amendment to Section 12 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 12. Discipline; removal and retirement.—

(a) JUDICIAL QUALIFICATIONS COMMISSION.—A judicial qualifications commission is created.

(1) There shall be a judicial qualifications commission vested with jurisdiction to investigate and recommend to the Supreme Court of Florida the removal from office of any justice or judge whose conduct, during term of office or otherwise occurring on or after November 1, 1966, (without regard to the effective date of this section) demonstrates a present unfitness to hold office, and to investigate and recommend the discipline

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30 of a justice or judge whose conduct, during term of office or
31 otherwise occurring on or after November 1, 1966 (without regard
32 to the effective date of this section), warrants such
33 discipline. For purposes of this section, discipline is defined
34 as any or all of the following: reprimand, fine, suspension with
35 or without pay, or lawyer discipline. The commission shall have
36 jurisdiction over justices and judges regarding allegations that
37 misconduct occurred before or during service as a justice or
38 judge if a complaint is made no later than one year following
39 service as a justice or judge. The commission shall have
40 jurisdiction regarding allegations of incapacity during service
41 as a justice or judge. The commission shall be composed of:

42 a. Two judges of district courts of appeal selected by the
43 judges of those courts, two circuit judges selected by the
44 judges of the circuit courts and two judges of county courts
45 selected by the judges of those courts;

46 b. Four electors who reside in the state, who are members
47 of the bar of Florida, and who shall be chosen by the governing
48 body of the bar of Florida; and

49 c. Five electors who reside in the state, who have never
50 held judicial office or been members of the bar of Florida, and
51 who shall be appointed by the governor.

52 (2) The members of the judicial qualifications commission
53 shall serve staggered terms, not to exceed six years, as
54 prescribed by general law. No member of the commission except a
55 judge shall be eligible for state judicial office while acting
56 as a member of the commission and for a period of two years
57 thereafter. No member of the commission shall hold office in a
58 political party or participate in any campaign for judicial

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59 office or hold public office; provided that a judge may campaign
60 for judicial office and hold that office. The commission shall
61 elect one of its members as its chairperson.

62 (3) Members of the judicial qualifications commission not
63 subject to impeachment shall be subject to removal from the
64 commission pursuant to the provisions of Article IV, Section 7,
65 Florida Constitution.

66 (4)a. The commission shall adopt rules regulating its
67 proceedings, the filling of vacancies by the appointing
68 authorities, the disqualification of members, the rotation of
69 members between the panels, and the temporary replacement of
70 disqualified or incapacitated members. The commission's rules,
71 or any part thereof, may be repealed by general law enacted by a
72 majority vote of the membership of each house of the
73 legislature, or by the supreme court, five justices concurring.
74 The commission shall have power to issue subpoenas.

75 b. Until formal charges against a justice or judge are
76 filed by the investigative panel with the clerk of the supreme
77 court of Florida, all proceedings by or before the commission
78 shall be confidential. ~~;~~ ~~provided,~~ However, upon:

79 1. The a finding of probable cause and the filing by the
80 investigative panel with said clerk of such formal charges;

81 2. A determination that formal charges will not be filed;
82 or

83 3. The entry of a stipulation or other settlement agreement
84 before the investigative panel determines whether to file formal
85 against a justice or judge such charges, and

86
87 all further proceedings before the commission shall be open to

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88 the public and all records and materials of the commission
89 relating to the complaint against the justice or judge shall be
90 open to the public for inspection or copying. However,
91 information that is otherwise confidential or exempt shall
92 retain its status. The records and materials shall be accessible
93 to the public regardless of whether they were received or
94 created while the proceedings were confidential or open to the
95 public.

96 (5) The commission shall have access to all information
97 from all executive, legislative and judicial agencies, including
98 grand juries, subject to the rules of the commission. At any
99 time, on request of the speaker of the house of representatives
100 or the governor, the commission shall make available all
101 information in the possession of the commission for use in
102 consideration of impeachment or suspension, respectively. The
103 commission shall notify the speaker of the house of
104 representatives of all complaints received or initiated, all
105 investigations conducted, and all complaints dismissed, settled,
106 or otherwise concluded.

107 (b) PANELS.—The commission shall be divided into an
108 investigative panel and a hearing panel as established by rule
109 of the commission. The investigative panel is vested with the
110 jurisdiction to receive or initiate complaints, conduct
111 investigations, dismiss complaints, and upon a vote of a simple
112 majority of the panel submit formal charges to the hearing
113 panel. The hearing panel is vested with the authority to receive
114 and hear formal charges from the investigative panel and upon a
115 two-thirds vote of the panel recommend to the supreme court the
116 removal of a justice or judge or the involuntary retirement of a

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117 justice or judge for any permanent disability that seriously
118 interferes with the performance of judicial duties. Upon a
119 simple majority vote of the membership of the hearing panel, the
120 panel may recommend to the supreme court that the justice or
121 judge be subject to appropriate discipline.

122 (c) SUPREME COURT.—The supreme court shall receive
123 recommendations from the judicial qualifications commission's
124 hearing panel.

125 (1) The supreme court may accept, reject, or modify in
126 whole or in part the findings, conclusions, and recommendations
127 of the commission and it may order that the justice or judge be
128 subjected to appropriate discipline, or be removed from office
129 with termination of compensation for willful or persistent
130 failure to perform judicial duties or for other conduct
131 unbecoming a member of the judiciary demonstrating a present
132 unfitness to hold office, or be involuntarily retired for any
133 permanent disability that seriously interferes with the
134 performance of judicial duties. Malafides, scienter or moral
135 turpitude on the part of a justice or judge shall not be
136 required for removal from office of a justice or judge whose
137 conduct demonstrates a present unfitness to hold office. After
138 the filing of a formal proceeding and upon request of the
139 investigative panel, the supreme court may suspend the justice
140 or judge from office, with or without compensation, pending
141 final determination of the inquiry.

142 (2) The supreme court may award costs to the prevailing
143 party.

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

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146 (e) Notwithstanding any of the foregoing provisions of this
147 section, if the person who is the subject of proceedings by the
148 judicial qualifications commission is a justice of the supreme
149 court of Florida all justices of such court automatically shall
150 be disqualified to sit as justices of such court with respect to
151 all proceedings therein concerning such person and the supreme
152 court for such purposes shall be composed of a panel consisting
153 of the seven chief judges of the judicial circuits of the state
154 of Florida most senior in tenure of judicial office as circuit
155 judge. For purposes of determining seniority of such circuit
156 judges in the event there be judges of equal tenure in judicial
157 office as circuit judge the judge or judges from the lower
158 numbered circuit or circuits shall be deemed senior. In the
159 event any such chief circuit judge is under investigation by the
160 judicial qualifications commission or is otherwise disqualified
161 or unable to serve on the panel, the next most senior chief
162 circuit judge or judges shall serve in place of such
163 disqualified or disabled chief circuit judge.

164 (f) SCHEDULE TO SECTION 12.—

165 (1) Except to the extent inconsistent with the provisions
166 of this section, all provisions of law and rules of court in
167 force on the effective date of this article shall continue in
168 effect until superseded in the manner authorized by the
169 constitution.

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

172 a. The commission shall be divided, as determined by the
173 chairperson, into one investigative panel and one hearing panel
174 to meet the responsibilities set forth in this section.

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- 175 b. The investigative panel shall be composed of:
- 176 1. Four judges,
- 177 2. Two members of the bar of Florida, and
- 178 3. Three non-lawyers.
- 179 c. The hearing panel shall be composed of:
- 180 1. Two judges,
- 181 2. Two members of the bar of Florida, and
- 182 3. Two non-lawyers.
- 183 d. Membership on the panels may rotate in a manner
- 184 determined by the rules of the commission provided that no
- 185 member shall vote as a member of the investigative and hearing
- 186 panel on the same proceeding.
- 187 e. The commission shall hire separate staff for each panel.
- 188 f. The members of the commission shall serve for staggered
- 189 terms of six years.
- 190 g. The terms of office of the present members of the
- 191 judicial qualifications commission shall expire upon the
- 192 effective date of the amendments to this section approved by the
- 193 legislature during the regular session of the legislature in
- 194 1996 and new members shall be appointed to serve the following
- 195 staggered terms:
- 196 1. Group I.—The terms of five members, composed of two
- 197 electors as set forth in s. 12(a)(1)c. of Article V, one member
- 198 of the bar of Florida as set forth in s. 12(a)(1)b. of Article
- 199 V, one judge from the district courts of appeal and one circuit
- 200 judge as set forth in s. 12(a)(1)a. of Article V, shall expire
- 201 on December 31, 1998.
- 202 2. Group II.—The terms of five members, composed of one
- 203 elector as set forth in s. 12(a)(1)c. of Article V, two members

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204 of the bar of Florida as set forth in s. 12(a)(1)b. of Article
205 V, one circuit judge and one county judge as set forth in s.
206 12(a)(1)a. of Article V shall expire on December 31, 2000.

207 3. Group III.—The terms of five members, composed of two
208 electors as set forth in s. 12(a)(1)c. of Article V, one member
209 of the bar of Florida as set forth in s. 12(a)(1)b., one judge
210 from the district courts of appeal and one county judge as set
211 forth in s. 12(a)(1)a. of Article V, shall expire on December
212 31, 2002.

213 h. An appointment to fill a vacancy of the commission shall
214 be for the remainder of the term.

215 i. Selection of members by district courts of appeal
216 judges, circuit judges, and county court judges, shall be by no
217 less than a majority of the members voting at the respective
218 courts' conferences. Selection of members by the board of
219 governors of the bar of Florida shall be by no less than a
220 majority of the board.

221 j. The commission shall be entitled to recover the costs of
222 investigation and prosecution, in addition to any penalty levied
223 by the supreme court.

224 k. The compensation of members and referees shall be the
225 travel expenses or transportation and per diem allowance as
226 provided by general law.

227 BE IT FURTHER RESOLVED that the following statement be
228 placed on the ballot:

229 CONSTITUTIONAL AMENDMENT

230 ARTICLE V, SECTION 12

231 MEETINGS, RECORDS, AND ACTIONS OF THE JUDICIAL
232 QUALIFICATIONS COMMISSION.—The Judicial Qualifications

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233 Commission is an independent commission created by the State
234 Constitution to investigate and prosecute before the Florida
235 Supreme Court alleged misconduct by a justice or judge.
236 Currently under the Constitution, commission proceedings are
237 confidential until formal charges are filed by the investigative
238 panel of the commission. Once formal charges are filed, the
239 formal charges and all further proceedings of the commission are
240 public. This proposed amendment provides that all records and
241 materials in the possession of the commission which are not
242 otherwise confidential or exempt from disclosure and which
243 relate to a complaint against a justice or judge shall be open
244 to the public once formal charges are filed, once a decision is
245 made not to pursue formal charges, or once the commission and
246 the justice or judge enter into a settlement agreement before
247 the commission's investigative panel determines whether to
248 pursue formal charges. Additionally, the amendment provides that
249 further proceedings of the commission are also open to the
250 public once a decision is made not to pursue formal charges or
251 once the commission and the justice or judge enter into a
252 settlement agreement before a decision is made on whether to
253 pursue formal charges.

254 Currently the State Constitution authorizes the House of
255 Representatives to impeach a justice or judge and authorizes the
256 Governor to suspend a justice or judge. Further, the Speaker of
257 the House of Representatives or the Governor may request, and
258 the Judicial Qualifications Commission must make available, all
259 information in the commission's possession for use in deciding
260 whether to impeach or suspend a justice or judge. This proposed
261 amendment requires the commission to notify the Speaker of the

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262 House of Representatives of all complaints received or initiated
263 against a justice or judge, all investigations conducted, and
264 all complaints dismissed, settled, or otherwise concluded.

265
266 BE IT FURTHER RESOLVED that the following statement be
267 placed on the ballot if a court declares the preceding statement
268 defective and the decision of the court is not reversed:

269 CONSTITUTIONAL AMENDMENT

270 ARTICLE V, SECTION 12

271 MAKING JUDICIAL QUALIFICATIONS COMMISSION MEETINGS AND
272 RECORDS PUBLIC AND REQUIRING NOTICE TO THE HOUSE SPEAKER.—
273 Proposing an amendment to the State Constitution to increase
274 public access to records and meetings of the Judicial
275 Qualifications Commission relating to complaints against
276 justices or judges in this state. The commission is responsible
277 for investigating and prosecuting allegations of alleged
278 misconduct by state justices and judges. Currently, the State
279 Constitution provides that until formal charges are filed by the
280 commission's investigative panel the proceedings of the
281 commission are confidential. However, once formal charges are
282 filed, the charges and all further proceedings are open to the
283 public. The initial complaint and other documents in possession
284 of the commission before the filing of formal charges do not
285 become public after the filing of formal charges. This proposed
286 amendment provides that all further proceedings shall be open to
287 the public and all records and materials in the possession of
288 the commission relating to a complaint against a justice or
289 judge shall be open to the public for inspection or copying once
290 one of the following events occurs: formal charges are filed; a

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291 decision is made not to file formal charges; or, before a
 292 decision is made on whether to file formal charges, the
 293 commission and the justice or judge enter into a settlement
 294 agreement. The proposed amendment applies only to information
 295 that is not otherwise confidential or exempt from disclosure.

296 The State Constitution currently authorizes the House of
 297 Representatives to impeach a justice or judge and authorizes the
 298 Governor to suspend a justice or judge. The Constitution also
 299 authorizes the Speaker of the House of Representatives or the
 300 Governor to request from the Judicial Qualifications Commission
 301 all information in the commission's possession for use in
 302 deciding whether to impeach or suspend. The commission must make
 303 the information available to the Governor and the Speaker of the
 304 House of Representatives. This proposed amendment to the State
 305 Constitution requires the commission to notify the Speaker of
 306 the House of Representatives of all complaints received or
 307 initiated against a justice or judge, all investigations
 308 conducted, and all complaints dismissed, settled, or otherwise
 309 concluded.

310

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

314 CONSTITUTIONAL AMENDMENT

315 ARTICLE V, SECTION 12

316 COMPLAINTS AGAINST AND INVESTIGATIONS OF JUSTICES AND
 317 JUDGES.—Proposing an amendment to the State Constitution to
 318 provide that all records, materials, and proceedings related to
 319 complaints and investigations of the Judicial Qualifications

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320 Commission which are not otherwise exempt from disclosure shall
321 be open to the public for inspection and copying upon the filing
322 of formal charges against the justice or judge, upon a
323 determination that formal charges will not be filed, or upon the
324 commission and the justice or judge entering into a settlement
325 before a decision is made about whether to file formal charges.
326 This provision applies to all records and materials in the
327 possession of the commission relating to that complaint against
328 the justice or judge. The commission is responsible for
329 investigating and prosecuting allegations of misconduct by state
330 justices and judges. Currently, after formal charges are filed,
331 all further proceedings conducted are open to the public and
332 records and materials thereafter created or acquired by the
333 commission are open to the public.

334 The State Constitution also provides currently that the
335 House of Representatives may investigate a justice or judge for
336 misconduct and may initiate impeachment proceedings against a
337 justice or judge for the misconduct. This proposed amendment
338 requires the Judicial Qualifications Commission to notify the
339 Speaker of the House of Representatives of all complaints
340 received or initiated against justices and judges, of all
341 investigations conducted against justices and judges, and of all
342 complaints against justices and judges which are dismissed,
343 settled, or otherwise concluded.

344

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

348

CONSTITUTIONAL AMENDMENT

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ARTICLE V, SECTION 12

REVISING DISCLOSURE REQUIREMENTS FOR THE JUDICIAL QUALIFICATIONS COMMISSION.—The State Constitution provides for the Judicial Qualifications Commission to investigate and recommend to the Supreme Court of Florida the discipline of any justice or judge whose conduct warrants discipline. The State Constitution also provides that commission proceedings are confidential until formal charges are filed, at which point further proceedings are open to the public. This proposed amendment maintains the requirement for those proceedings to be open to the public, but also provides for increased public access to proceedings of the commission and its records and materials. Specifically, under the amendment, the proceedings of the commission must be open to the public upon a determination by the commission that formal charges will not be filed or upon the entry into a settlement agreement with the justice or judge before the commission makes a decision on whether to file formal charges. Also under the amendment, all records and materials of the commission related to a complaint must be accessible to the public, excluding information that is otherwise confidential or exempt from disclosure, once the proceedings relating to the complaint are open to the public. The proposed amendment additionally requires the commission to notify the Speaker of the House of Representatives of all complaints received, initiated, or concluded and of all investigations conducted.