

House Joint Resolution

A joint resolution proposing an amendment to Section 12 of Article V of the State Constitution to provide that records, materials, and proceedings of the Judicial Qualifications Commission shall be public upon the filing of formal charges or upon a finding that formal charges will not be filed, to provide exceptions, and to delete outdated provisions.

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

HJR 7037

2011

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

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

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

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

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

HJR 7037

2011

57 | political party or participate in any campaign for judicial
 58 | office or hold public office; provided that a judge may campaign
 59 | for judicial office and hold that office. The commission shall
 60 | elect one of its members as its chairperson.

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

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

74 | b. ~~While an~~ ~~Until formal charges against a justice or~~
 75 | ~~judge are filed by the~~ investigative panel is investigating a
 76 | complaint, with the clerk of the supreme court of Florida all
 77 | proceedings by or before the commission and all records related
 78 | thereto shall be confidential. All records, materials, and
 79 | proceedings related to a complaint and investigation shall be
 80 | public upon either the filing of formal charges with the hearing
 81 | panel or upon a finding of the investigative panel that formal
 82 | charges will not be brought regarding a complaint. However,
 83 | information that is otherwise confidential or exempt shall
 84 | retain its status. This subparagraph applies to all records of

HJR 7037

2011

85 the commission; ~~provided, however, upon a finding of probable~~
 86 ~~cause and the filing by the investigative panel with said clerk~~
 87 ~~of such formal charges against a justice or judge such charges~~
 88 ~~and all further proceedings before the commission shall be~~
 89 ~~public.~~

90 (5) The commission shall have access to all information
 91 from all executive, legislative and judicial agencies, including
 92 grand juries, subject to the rules of the commission. At any
 93 time, on request of the speaker of the house of representatives
 94 or the governor, the commission shall make available all
 95 information in the possession of the commission for use in
 96 consideration of impeachment or suspension, respectively.

97 (b) PANELS.—The commission shall be divided into an
 98 investigative panel and a hearing panel as established by rule
 99 of the commission. The investigative panel is vested with the
 100 jurisdiction to receive or initiate complaints, conduct
 101 investigations, dismiss complaints, and upon a vote of a simple
 102 majority of the panel submit formal charges to the hearing
 103 panel. The hearing panel is vested with the authority to receive
 104 and hear formal charges from the investigative panel and upon a
 105 two-thirds vote of the panel recommend to the supreme court the
 106 removal of a justice or judge or the involuntary retirement of a
 107 justice or judge for any permanent disability that seriously
 108 interferes with the performance of judicial duties. Upon a
 109 simple majority vote of the membership of the hearing panel, the
 110 panel may recommend to the supreme court that the justice or
 111 judge be subject to appropriate discipline.

112 (c) SUPREME COURT.—The supreme court shall receive

HJR 7037

2011

113 recommendations from the judicial qualifications commission's
 114 hearing panel.

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

132 (2) The supreme court may award costs to the prevailing
 133 party.

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

136 (e) Notwithstanding any of the foregoing provisions of
 137 this section, if the person who is the subject of proceedings by
 138 the judicial qualifications commission is a justice of the
 139 supreme court of Florida all justices of such court
 140 automatically shall be disqualified to sit as justices of such

HJR 7037

2011

141 court with respect to all proceedings therein concerning such
 142 person and the supreme court for such purposes shall be composed
 143 of a panel consisting of the seven chief judges of the judicial
 144 circuits of the state of Florida most senior in tenure of
 145 judicial office as circuit judge. For purposes of determining
 146 seniority of such circuit judges in the event there be judges of
 147 equal tenure in judicial office as circuit judge the judge or
 148 judges from the lower numbered circuit or circuits shall be
 149 deemed senior. In the event any such chief circuit judge is
 150 under investigation by the judicial qualifications commission or
 151 is otherwise disqualified or unable to serve on the panel, the
 152 next most senior chief circuit judge or judges shall serve in
 153 place of such disqualified or disabled chief circuit judge.

154 (f) SCHEDULE TO SECTION 12.—

155 (1) Except to the extent inconsistent with the provisions
 156 of this section, all provisions of law and rules of court in
 157 force on the effective date of this article shall continue in
 158 effect until superseded in the manner authorized by the
 159 constitution.

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

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

165 b. The investigative panel shall be composed of:

- 166 1. Four judges,
- 167 2. Two members of the bar of Florida, and
- 168 3. Three non-lawyers.

HJR 7037

2011

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

HJR 7037

2011

197 ~~12(a)(1)a. of Article V shall expire on December 31, 2000.~~

198 ~~3. Group III. The terms of five members, composed of two~~
 199 ~~electors as set forth in s. 12(a)(1)c. of Article V, one member~~
 200 ~~of the bar of Florida as set forth in s. 12(a)(1)b., one judge~~
 201 ~~from the district courts of appeal and one county judge as set~~
 202 ~~forth in s. 12(a)(1)a. of Article V, shall expire on December~~
 203 ~~31, 2002.~~

204 g.h. An appointment to fill a vacancy of the commission
 205 shall be for the remainder of the term.

206 h.i. Selection of members by district courts of appeal
 207 judges, circuit judges, and county court judges, shall be by no
 208 less than a majority of the members voting at the respective
 209 courts' conferences. Selection of members by the board of
 210 governors of the bar of Florida shall be by no less than a
 211 majority of the board.

212 i.j. The commission shall be entitled to recover the costs
 213 of investigation and prosecution, in addition to any penalty
 214 levied by the supreme court.

215 j.k. The compensation of members and referees shall be the
 216 travel expenses or transportation and per diem allowance as
 217 provided by general law.

218 BE IT FURTHER RESOLVED that the following statement be
 219 placed on the ballot:

220 CONSTITUTIONAL AMENDMENT

221 ARTICLE V, SECTION 12

222 OPEN RECORDS OF THE JUDICIAL QUALIFICATIONS COMMISSION.—
 223 Proposing an amendment to the State Constitution to provide that
 224 all records, materials, and proceedings related to complaints

HJR 7037

2011

225 and investigations of the Judicial Qualifications Commission not
226 otherwise exempt from disclosure shall be public upon the filing
227 of formal charges against the judge or upon a determination by
228 the commission or investigative panel that formal charges will
229 not be filed against the judge.

230 Under current law, records, materials, and proceedings
231 related to complaints and investigations of the Judicial
232 Qualifications Commission do not become public unless formal
233 charges are filed against the judge. This amendment makes most
234 records, materials, and proceedings open for public inspection
235 and review once the commission makes a determination whether or
236 not to file formal charges against the judge. However, general
237 public records exemption laws applicable to the judicial branch
238 will continue to apply to records of the commission. This
239 provision shall apply to all records and materials currently in
240 possession of the commission and to all records, materials, and
241 proceedings of the commission subsequently created or held.

242 This proposed amendment also removes outdated provisions
243 related to the Judicial Qualifications Commission.