



289464

LEGISLATIVE ACTION

Senate	.	House
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Floor: 1/AD/3R	.	Floor: SA1/CA
05/02/2011 06:14 PM	.	05/03/2011 05:47 PM
	.	

Senators Bogdanoff, Simmons, Dockery, Jones, Detert, Storms, Diaz de la Portilla, Fasano, Latvala, and Evers moved the following:

Senate Amendment (with title amendment)

Delete everything after the resolving clause and insert:

That the following amendment to Sections 2, 4, 11, and 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



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12 SECTION 2. Administration; practice and procedure.—

13 (a) The supreme court shall adopt rules for the practice
14 and procedure in all courts including the time for seeking
15 appellate review, the administrative supervision of all courts,
16 the transfer to the court having jurisdiction of any proceeding
17 when the jurisdiction of another court has been improvidently
18 invoked, and a requirement that no cause shall be dismissed
19 because an improper remedy has been sought. The supreme court
20 shall adopt rules to allow it ~~the court~~ and the district courts
21 of appeal to submit questions relating to military law to the
22 federal Court of Appeals for the Armed Forces for an advisory
23 opinion. Rules of court may be repealed by general law that
24 expresses the policy behind the repeal enacted by two-thirds
25 vote of the membership of each house of the legislature. The
26 court may readopt the repealed rule only in conformity with the
27 public policy expressed by the legislature. If the legislature
28 repeals the readopted rule, the rule may not be readopted
29 thereafter without prior approval of the legislature.

30 (b) The chief justice of the supreme court of Florida shall
31 be chosen by a majority of the members of the court; shall be
32 the chief administrative officer of the judicial system; and
33 shall have the power to assign justices or judges, including
34 consenting retired justices or judges, to temporary duty in any
35 court for which the judge is qualified and to delegate to a
36 chief judge of a judicial circuit the power to assign judges for
37 duty in that circuit.

38 (c) A chief judge for each district court of appeal shall
39 be chosen by a majority of the judges thereof or, if there is no
40 majority, by the chief justice. The chief judge of a district



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41 court shall be responsible for the administrative supervision of
42 the district court.

43 (d) A chief judge in each circuit shall be chosen from
44 among the circuit judges as provided by supreme court rule. The
45 chief judge of a circuit shall be responsible for the
46 administrative supervision of the circuit courts and county
47 courts in the ~~his~~ circuit.

48 SECTION 4. District courts of appeal.—

49 (a) ORGANIZATION.—There shall be a district court of appeal
50 serving each appellate district. Each district court of appeal
51 shall consist of at least three judges. Three judges shall
52 consider each case and the concurrence of two shall be necessary
53 to a decision.

54 (b) JURISDICTION.—

55 (1) District courts of appeal shall have jurisdiction to
56 hear appeals, that may be taken as a matter of right, from final
57 judgments or orders of trial courts, including those entered on
58 review of administrative action, not directly appealable to the
59 supreme court or a circuit court. They may review interlocutory
60 orders in such cases to the extent provided by rules adopted by
61 the supreme court.

62 (2) District courts of appeal shall have the power of
63 direct review of administrative action, as prescribed by general
64 law.

65 (3) A district court of appeal or any judge thereof may
66 issue writs of habeas corpus returnable before the court or any
67 judge thereof or before any circuit judge within the territorial
68 jurisdiction of the court. A district court of appeal may issue
69 writs of mandamus, certiorari, prohibition, quo warranto, and



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70 other writs necessary to the complete exercise of its
71 jurisdiction. To the extent necessary to dispose of all issues
72 in a cause properly before it, a district court of appeal may
73 exercise any of the appellate jurisdiction of the circuit
74 courts.

75 ~~(c) CLERKS AND MARSHALS. Each district court of appeal~~
76 ~~shall appoint a clerk and a marshal who shall hold office during~~
77 ~~the pleasure of the court and perform such duties as the court~~
78 ~~directs. Their compensation shall be fixed by general law. The~~
79 ~~marshal shall have the power to execute the process of the court~~
80 ~~throughout the territorial jurisdiction of the court, and in any~~
81 ~~county may deputize the sheriff or a deputy sheriff for such~~
82 ~~purpose.~~

83 SECTION 11. Vacancies.—

84 (a) Whenever a vacancy occurs in a judicial office to which
85 election for retention applies, the governor shall fill the
86 vacancy by appointing for a term ending on the first Tuesday
87 after the first Monday in January of the year following the next
88 general election occurring at least one year after the date of
89 appointment, one of not fewer than three persons nor more than
90 six persons nominated by the appropriate judicial nominating
91 commission.

92 (b) The governor shall fill each vacancy on a circuit court
93 or on a county court, wherein the judges are elected by a
94 majority vote of the electors, by appointing for a term ending
95 on the first Tuesday after the first Monday in January of the
96 year following the next primary and general election occurring
97 at least one year after the date of appointment, one of not
98 fewer than three persons nor more than six persons nominated by



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99 the appropriate judicial nominating commission. An election
100 shall be held to fill that judicial office for the term of the
101 office beginning at the end of the appointed term.

102 (c) The nominations shall be made within thirty days from
103 the occurrence of a vacancy unless the period is extended by the
104 governor for a time not to exceed thirty days. The governor
105 shall make the appointment within sixty days after the
106 nominations have been certified to the governor.

107 (d) Each appointment of a justice of the supreme court is
108 subject to confirmation by the senate. The senate may sit for
109 the purpose of confirmation regardless of whether the house of
110 representatives is in session or not. If the senate fails to
111 vote on the appointment of a justice within 90 days, the justice
112 shall be deemed confirmed. If the senate votes to not confirm
113 the appointment, the supreme court judicial nominating
114 commission shall reconvene as though a new vacancy had occurred
115 but may not renominate any person whose prior appointment to
116 fill the same vacancy was not confirmed by the senate. The
117 appointment of a justice is effective upon confirmation by the
118 senate.

119 (e)~~(d)~~ There shall be a separate judicial nominating
120 commission as provided by general law for the supreme court, one
121 for each district court of appeal, and one for each judicial
122 circuit for all trial courts within the circuit. Uniform rules
123 of procedure shall be established by the judicial nominating
124 commissions at each level of the court system. Such rules, or
125 any part thereof, may be repealed by general law enacted by a
126 majority vote of the membership of each house of the
127 legislature, or by the supreme court, five justices concurring.



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128 Except for deliberations of the judicial nominating commissions,
129 the proceedings of the commissions and their records shall be
130 open to the public.

131 SECTION 12. Discipline; removal and retirement.-

132 (a) JUDICIAL QUALIFICATIONS COMMISSION.-A judicial
133 qualifications commission is created.

134 (1) There shall be a judicial qualifications commission
135 vested with jurisdiction to investigate and recommend to the
136 Supreme Court of Florida the removal from office of any justice
137 or judge whose conduct, during term of office or otherwise,
138 ~~occurring on or after November 1, 1966, (without regard to the~~
139 ~~effective date of this section)~~ demonstrates a present unfitness
140 to hold office, and to investigate and recommend the discipline
141 of a justice or judge whose conduct, during term of office or
142 otherwise ~~occurring on or after November 1, 1966 (without regard~~
143 ~~to the effective date of this section)~~, warrants such
144 discipline. For purposes of this section, discipline is defined
145 as any or all of the following: reprimand, fine, suspension with
146 or without pay, or lawyer discipline. The commission shall have
147 jurisdiction over justices and judges regarding allegations that
148 misconduct occurred before or during service as a justice or
149 judge if a complaint is made no later than one year following
150 service as a justice or judge. The commission shall have
151 jurisdiction regarding allegations of incapacity during service
152 as a justice or judge. The commission shall be composed of:

153 a. Two judges of district courts of appeal selected by the
154 judges of those courts, two circuit judges selected by the
155 judges of the circuit courts and two judges of county courts
156 selected by the judges of those courts;



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157 b. Four electors who reside in the state, who are members
158 of the bar of Florida, and who shall be chosen by the governing
159 body of the bar of Florida; and

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

163 (2) The members of the judicial qualifications commission
164 shall serve staggered terms, not to exceed six years, as
165 prescribed by general law. No member of the commission except a
166 judge shall be eligible for state judicial office while acting
167 as a member of the commission and for a period of two years
168 thereafter. No member of the commission shall hold office in a
169 political party or participate in any campaign for judicial
170 office or hold public office; provided that a judge may campaign
171 for judicial office and hold that office. The commission shall
172 elect one of its members as its chairperson.

173 (3) Members of the judicial qualifications commission not
174 subject to impeachment shall be subject to removal from the
175 commission pursuant to the provisions of Article IV, Section 7,
176 Florida Constitution.

177 (4) The commission shall adopt rules regulating its
178 proceedings, the filling of vacancies by the appointing
179 authorities, the disqualification of members, the rotation of
180 members between the panels, and the temporary replacement of
181 disqualified or incapacitated members. The commission's rules,
182 or any part thereof, may be repealed by general law ~~enacted by a~~
183 ~~majority vote of the membership of each house of the~~
184 ~~legislature,~~ or by the supreme court, five justices concurring.
185 The commission shall have power to issue subpoenas. Until formal



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186 charges against a justice or judge are filed by the
187 investigative panel with the clerk of the supreme court of
188 Florida all proceedings by or before the commission shall be
189 confidential; provided, however, upon a finding of probable
190 cause and the filing by the investigative panel with said clerk
191 of such formal charges against a justice or judge such charges
192 and all further proceedings before the commission shall be
193 public.

194 (5) The commission shall have access to all information
195 from all executive, legislative and judicial agencies, including
196 grand juries, subject to the rules of the commission. At any
197 time, on request of the speaker of the house of representatives
198 ~~or the governor~~, the commission shall make available to the
199 house of representatives all information in the possession of
200 the commission, which information shall remain confidential
201 during any investigation and until such information is used in
202 the pursuit for use in consideration of impeachment or
203 suspension, respectively.

204 (b) PANELS.—The commission shall be divided into an
205 investigative panel and a hearing panel as established by rule
206 of the commission. The investigative panel is vested with the
207 jurisdiction to receive or initiate complaints, conduct
208 investigations, dismiss complaints, and upon a vote of a simple
209 majority of the panel submit formal charges to the hearing
210 panel. The hearing panel is vested with the authority to receive
211 and hear formal charges from the investigative panel and upon a
212 two-thirds vote of the panel recommend to the supreme court the
213 removal of a justice or judge or the involuntary retirement of a
214 justice or judge for any permanent disability that seriously



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215 interferes with the performance of judicial duties. Upon a
216 simple majority vote of the membership of the hearing panel, the
217 panel may recommend to the supreme court that the justice or
218 judge be subject to appropriate discipline.

219 (c) SUPREME COURT.—The supreme court shall receive
220 recommendations from the judicial qualifications commission's
221 hearing panel.

222 (1) The supreme court may accept, reject, or modify in
223 whole or in part the findings, conclusions, and recommendations
224 of the commission and it may order that the justice or judge be
225 subjected to appropriate discipline, or be removed from office
226 with termination of compensation for willful or persistent
227 failure to perform judicial duties or for other conduct
228 unbecoming a member of the judiciary demonstrating a present
229 unfitness to hold office, or be involuntarily retired for any
230 permanent disability that seriously interferes with the
231 performance of judicial duties. Malafides, scienter or moral
232 turpitude on the part of a justice or judge shall not be
233 required for removal from office of a justice or judge whose
234 conduct demonstrates a present unfitness to hold office. After
235 the filing of a formal proceeding and upon request of the
236 investigative panel, the supreme court may suspend the justice
237 or judge from office, with or without compensation, pending
238 final determination of the inquiry.

239 (2) The supreme court may award costs to the prevailing
240 party.

241 (d) REMOVAL POWER.—The power of removal conferred by this
242 section shall be both alternative and cumulative to the power of
243 impeachment.



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244 (e) PROCEEDINGS INVOLVING SUPREME COURT JUSTICE.—

245 Notwithstanding any of the foregoing provisions of this section,
246 if the person who is the subject of proceedings by the judicial
247 qualifications commission is a justice of the supreme court of
248 Florida all justices of such court automatically shall be
249 disqualified to sit as justices of such court with respect to
250 all proceedings therein concerning such person and the supreme
251 court for such purposes shall be composed of a panel consisting
252 of the seven chief judges of the judicial circuits of the state
253 of Florida most senior in tenure of judicial office as circuit
254 judge. For purposes of determining seniority of such circuit
255 judges in the event there be judges of equal tenure in judicial
256 office as circuit judge the judge or judges from the lower
257 numbered circuit or circuits shall be deemed senior. In the
258 event any such chief circuit judge is under investigation by the
259 judicial qualifications commission or is otherwise disqualified
260 or unable to serve on the panel, the next most senior chief
261 circuit judge or judges shall serve in place of such
262 disqualified or disabled chief circuit judge.

263 (f) SCHEDULE TO SECTION 12.—

264 (1) Except to the extent inconsistent with the provisions
265 of this section, all provisions of law and rules of court in
266 force on the effective date of this article shall continue in
267 effect until superseded in the manner authorized by the
268 constitution.

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

271 a. The commission shall be divided, as determined by the
272 chairperson, into one investigative panel and one hearing panel



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273 to meet the responsibilities set forth in this section.
274 b. The investigative panel shall be composed of:
275 1. Four judges,
276 2. Two members of the bar of Florida, and
277 3. Three non-lawyers.
278 c. The hearing panel shall be composed of:
279 1. Two judges,
280 2. Two members of the bar of Florida, and
281 3. Two non-lawyers.
282 d. Membership on the panels may rotate in a manner
283 determined by the rules of the commission provided that no
284 member shall vote as a member of the investigative and hearing
285 panel on the same proceeding.
286 e. The commission shall hire separate staff for each panel.
287 f. The members of the commission shall serve for staggered
288 terms of six years.
289 ~~g. The terms of office of the present members of the~~
290 ~~judicial qualifications commission shall expire upon the~~
291 ~~effective date of the amendments to this section approved by the~~
292 ~~legislature during the regular session of the legislature in~~
293 ~~1996 and new members shall be appointed to serve the following~~
294 ~~staggered terms:~~
295 ~~1. Group I. The terms of five members, composed of two~~
296 ~~electors as set forth in s. 12(a)(1)c. of Article V, one member~~
297 ~~of the bar of Florida as set forth in s. 12(a)(1)b. of Article~~
298 ~~V, one judge from the district courts of appeal and one circuit~~
299 ~~judge as set forth in s. 12(a)(1)a. of Article V, shall expire~~
300 ~~on December 31, 1998.~~
301 ~~2. Group II. The terms of five members, composed of one~~



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302 ~~elector as set forth in s. 12(a)(1)c. of Article V, two members~~
303 ~~of the bar of Florida as set forth in s. 12(a)(1)b. of Article~~
304 ~~V, one circuit judge and one county judge as set forth in s.~~
305 ~~12(a)(1)a. of Article V shall expire on December 31, 2000.~~

306 ~~3. Group III. The terms of five members, composed of two~~
307 ~~electors as set forth in s. 12(a)(1)c. of Article V, one member~~
308 ~~of the bar of Florida as set forth in s. 12(a)(1)b., one judge~~
309 ~~from the district courts of appeal and one county judge as set~~
310 ~~forth in s. 12(a)(1)a. of Article V, shall expire on December~~
311 ~~31, 2002.~~

312 ~~g.h.~~ An appointment to fill a vacancy of the commission
313 shall be for the remainder of the term.

314 ~~h.i.~~ Selection of members by district courts of appeal
315 judges, circuit judges, and county court judges, shall be by no
316 less than a majority of the members voting at the respective
317 courts' conferences. Selection of members by the board of
318 governors of the bar of Florida shall be by no less than a
319 majority of the board.

320 ~~i.j.~~ The commission shall be entitled to recover the costs
321 of investigation and prosecution, in addition to any penalty
322 levied by the supreme court.

323 ~~j.k.~~ The compensation of members and referees shall be the
324 travel expenses or transportation and per diem allowance as
325 provided by general law.

326 BE IT FURTHER RESOLVED that the following statement be
327 placed on the ballot:

328 CONSTITUTIONAL AMENDMENT

329 ARTICLE V, SECTIONS 2, 4, 11, AND 12

330 STATE COURTS.—Proposing a revision of Article V of the



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331 State Constitution relating to the judiciary.

332 Under current law, the Governor appoints a justice from a
333 list of nominees provided by a judicial nominating commission,
334 and appointments by the Governor are not subject to
335 confirmation. This revision requires Senate confirmation of a
336 justice before the appointee can take office. If the Senate
337 votes not to confirm the appointment, the judicial nominating
338 commission must reconvene and may not renominate any person
339 whose prior appointment to fill the same vacancy was not
340 confirmed by the Senate. For the purpose of confirmation, the
341 Senate may meet at any time. If the Senate does not vote against
342 confirmation within 90 days, the justice will be deemed
343 confirmed and will take office.

344 The State Constitution authorizes the Supreme Court to
345 adopt rules for the practice and procedure in all courts. The
346 constitution further provides that a rule of court may be
347 repealed by a general law enacted by a two-thirds vote of the
348 membership of each house of the Legislature. This proposed
349 constitutional revision eliminates the requirement that a
350 general law repealing a court rule pass by a two-thirds vote of
351 each house. The Legislature could repeal a rule of court by a
352 general law approved by a majority vote of each house of the
353 Legislature that expresses the policy behind the repeal. The
354 court could readopt the rule in conformity with the public
355 policy expressed by the Legislature, but if the Legislature
356 repeals the readopted rule, this proposed revision prohibits the
357 court from readopting the repealed rule without the
358 Legislature's prior approval.

359 The Judicial Qualifications Commission is an independent



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360 commission created by the State Constitution to investigate and
361 prosecute before the Florida Supreme Court alleged misconduct by
362 a justice or judge. Currently under the constitution, commission
363 proceedings are confidential until formal charges are filed by
364 the investigative panel of the commission. Once formal charges
365 are filed, the formal charges and all further proceedings of the
366 commission are public. Currently, the constitution authorizes
367 the House of Representatives to impeach a justice or judge.
368 Further, the Speaker of the House of Representatives may
369 request, and the Judicial Qualifications Commission must make
370 available, all information in the commission's possession for
371 use in deciding whether to impeach a justice or judge. This
372 proposed revision requires the commission to make all of its
373 files available to the Speaker of the House of Representatives,
374 rather than just the file of a justice or judge under
375 investigation by the House of Representatives. Such files would
376 maintain their confidentiality unless the House of
377 Representatives initiates impeachment proceedings against a
378 justice or judge, in which case the files related to that
379 justice or judge may be open. This revision deletes a
380 requirement that a general law repealing a commission rule be
381 passed by a majority vote of the membership of each house of the
382 Legislature and revises the number of Supreme Court justices
383 needed to repeal such a rule.

384 This revision will take effect January 7, 2013, if approved
385 by the electors. This revision makes other conforming and
386 modernizing changes to the State Constitution regarding the
387 judicial system; removing outdated schedules related to the
388 Judicial Qualifications Commission; and making conforming and



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389 technical changes in the judicial articles of the constitution.

390

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

394 CONSTITUTIONAL AMENDMENT

395 ARTICLE V, SECTIONS 2, 4, 11, AND 12

396 JUDICIARY.—Proposing a revision of the Judiciary Article of
397 the Florida Constitution; requiring Senate confirmation for
398 appointment of a Supreme Court justice; providing standards and
399 procedures for legislative repeal of a court rule; allowing
400 legislative review of confidential files of the Judicial
401 Qualifications Commission; and making other ancillary
402 amendments, including, but not limited to, technical and
403 conforming amendments.

404

405 BE IT FURTHER RESOLVED that the following statement be
406 placed on the ballot if a court declares the preceding
407 statements defective and the decision of the court is not
408 reversed:

409 CONSTITUTIONAL AMENDMENT

410 ARTICLE V, SECTIONS 2, 4, 11, AND 12

411 STATE COURTS.—Proposing a revision to Article V of the
412 State Constitution relating to the judiciary; changing the
413 authority of the Legislature to repeal a court rule by 2/3 vote
414 of the membership of each house to a simple majority of each
415 house; limiting the Supreme Court's ability to readopt a rule
416 repealed by the Legislature; requiring Senate confirmation
417 before a justice may take office; providing that if the Senate



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418 does not act within 90 days the nominee is deemed confirmed as a
419 justice; allowing the Senate to meet outside of regular session
420 without having the House of Representatives convene at the same
421 time; deleting outdated references; requiring the Judicial
422 Qualifications Commission to provide the House of
423 Representatives access to records; providing for confidentiality
424 of records.

425
426 ===== T I T L E A M E N D M E N T =====

427 And the title is amended as follows:

428 Delete everything before the resolving clause
429 and insert:

430 A bill to be entitled
431 A joint resolution proposing a revision of Article V
432 of the State Constitution, relating to the judiciary,
433 consisting of amendments to Sections 2, 4, 11, and 12
434 of Article V of the State Constitution; revising
435 provisions relating to repeal of court rules; limiting
436 readoption of a repealed court rule; providing for
437 Senate confirmation of Supreme Court justices;
438 requiring the Judicial Qualifications Commission to
439 make all of its files available to the Speaker of the
440 House of Representatives; revising provisions relating
441 to repeal of commission rules; making other conforming
442 and modernizing changes to the State Constitution
443 regarding the judicial system; providing an effective
444 date.