

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Eisnaugle offered the following:

2
3 **Amendment to Amendment (289464) (with title amendment)**

4 Remove lines 5-424 and insert:

5 That the following revision to Sections 2, 11, and 12 of
6 Article V of the State Constitution is agreed to and shall be
7 submitted to the electors of this state for approval or
8 rejection at the next general election or at an earlier special
9 election specifically authorized by law for that purpose:

10 ARTICLE V

11 JUDICIARY

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
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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 Rules of court may be repealed by general law that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26 court may readopt the repealed rule only in conformity with the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 determines that a rule has been readopted and repeals the
29 readopted rule, the rule may not be readopted thereafter without
30 prior approval of the legislature.

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

39 (c) A chief judge for each district court of appeal shall
40 be chosen by a majority of the judges thereof or, if there is no
41 majority, by the chief justice. The chief judge shall be
42 responsible for the administrative supervision of the 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
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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 11. Vacancies.—

49 (a) Whenever a vacancy occurs in a judicial office to
50 which election for retention applies, the governor shall fill
51 the vacancy by appointing for a term ending on the first Tuesday
52 after the first Monday in January of the year following the next
53 general election occurring at least one year after the date of
54 appointment, one of not fewer than three persons nor more than
55 six persons nominated by the appropriate judicial nominating
56 commission.

57 (b) The governor shall fill each vacancy on a circuit
58 court or on a county court, wherein the judges are elected by a
59 majority vote of the electors, by appointing for a term ending
60 on the first Tuesday after the first Monday in January of the
61 year following the next primary and general election occurring
62 at least one year after the date of appointment, one of not
63 fewer than three persons nor more than six persons nominated by
64 the appropriate judicial nominating commission. An election
65 shall be held to fill that judicial office for the term of the
66 office beginning at the end of the appointed term.

67 (c) The nominations shall be made within thirty days from
68 the occurrence of a vacancy unless the period is extended by the
69 governor for a time not to exceed thirty days. The governor
70 shall make the appointment within sixty days after the
71 nominations have been certified to the governor.

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72 (d) Each appointment of a justice of the supreme court is
73 subject to confirmation by the senate. The senate may sit for
74 the purpose of confirmation regardless of whether the house of
75 representatives is in session or not. If the senate fails to
76 vote on the appointment of a justice within 90 days, the justice
77 shall be deemed confirmed. If the senate votes to not confirm
78 the appointment, the supreme court judicial nominating
79 commission shall reconvene as though a new vacancy had occurred
80 but may not renominate any person whose prior appointment to
81 fill the same vacancy was not confirmed by the senate. The
82 appointment of a justice is effective upon confirmation by the
83 senate.

84 (e)-(d) There shall be a separate judicial nominating
85 commission as provided by general law for the supreme court, one
86 for each district court of appeal, and one for each judicial
87 circuit for all trial courts within the circuit. Uniform rules
88 of procedure shall be established by the judicial nominating
89 commissions at each level of the court system. Such rules, or
90 any part thereof, may be repealed by general law ~~enacted by a~~
91 ~~majority vote of the membership of each house of the~~
92 ~~legislature~~, or by the supreme court, five justices concurring.
93 Except for deliberations of the judicial nominating commissions,
94 the proceedings of the commissions and their records shall be
95 open to the public.

96 SECTION 12. Discipline; removal and retirement.—

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

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99 (1) There shall be a judicial qualifications commission
100 vested with jurisdiction to investigate and recommend to the
101 Supreme Court of Florida the removal from office of any justice
102 or judge whose conduct, during term of office or otherwise,
103 ~~occurring on or after November 1, 1966, (without regard to the~~
104 ~~effective date of this section)~~ demonstrates a present unfitness
105 to hold office, and to investigate and recommend the discipline
106 of a justice or judge whose conduct, during term of office or
107 otherwise ~~occurring on or after November 1, 1966 (without regard~~
108 ~~to the effective date of this section)~~, warrants such
109 discipline. For purposes of this section, discipline is defined
110 as any or all of the following: reprimand, fine, suspension with
111 or without pay, or lawyer discipline. The commission shall have
112 jurisdiction over justices and judges regarding allegations that
113 misconduct occurred before or during service as a justice or
114 judge if a complaint is made no later than one year following
115 service as a justice or judge. The commission shall have
116 jurisdiction regarding allegations of incapacity during service
117 as a justice or judge. The commission shall be composed of:

118 a. Two judges of district courts of appeal selected by the
119 judges of those courts, two circuit judges selected by the
120 judges of the circuit courts and two judges of county courts
121 selected by the judges of those courts;

122 b. Four electors who reside in the state, who are members
123 of the bar of Florida, and who shall be chosen by the governing
124 body of the bar of Florida; and

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

128 (2) The members of the judicial qualifications commission
129 shall serve staggered terms, not to exceed six years, as
130 prescribed by general law. No member of the commission except a
131 judge shall be eligible for state judicial office while acting
132 as a member of the commission and for a period of two years
133 thereafter. No member of the commission shall hold office in a
134 political party or participate in any campaign for judicial
135 office or hold public office; provided that a judge may campaign
136 for judicial office and hold that office. The commission shall
137 elect one of its members as its chairperson.

138 (3) Members of the judicial qualifications commission not
139 subject to impeachment shall be subject to removal from the
140 commission pursuant to the provisions of Article IV, Section 7,
141 Florida Constitution.

142 (4) The commission shall adopt rules regulating its
143 proceedings, the filling of vacancies by the appointing
144 authorities, the disqualification of members, the rotation of
145 members between the panels, and the temporary replacement of
146 disqualified or incapacitated members. The commission's rules,
147 or any part thereof, may be repealed by general law ~~enacted by a~~
148 ~~majority vote of the membership of each house of the~~
149 ~~legislature,~~ or by the supreme court, five justices concurring.
150 The commission shall have power to issue subpoenas. Until formal
151 charges against a justice or judge are filed by the
152 investigative panel with the clerk of the supreme court of

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153 Florida all proceedings by or before the commission shall be
154 confidential; provided, however, upon a finding of probable
155 cause and the filing by the investigative panel with said clerk
156 of such formal charges against a justice or judge such charges
157 and all further proceedings before the commission shall be
158 public.

159 (5) The commission shall have access to all information
160 from all executive, legislative and judicial agencies, including
161 grand juries, subject to the rules of the commission. At any
162 time, on request of the speaker of the house of representatives
163 ~~or the governor~~, the commission shall make available to the
164 house of representatives all information in the possession of
165 the commission, which information shall remain confidential
166 during any investigation and until such information is used in
167 the pursuit for use in consideration of impeachment ~~or~~
168 ~~suspension, respectively.~~

169 (b) PANELS.—The commission shall be divided into an
170 investigative panel and a hearing panel as established by rule
171 of the commission. The investigative panel is vested with the
172 jurisdiction to receive or initiate complaints, conduct
173 investigations, dismiss complaints, and upon a vote of a simple
174 majority of the panel submit formal charges to the hearing
175 panel. The hearing panel is vested with the authority to receive
176 and hear formal charges from the investigative panel and upon a
177 two-thirds vote of the panel recommend to the supreme court the
178 removal of a justice or judge or the involuntary retirement of a
179 justice or judge for any permanent disability that seriously
180 interferes with the performance of judicial duties. Upon a

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181 simple majority vote of the membership of the hearing panel, the
182 panel may recommend to the supreme court that the justice or
183 judge be subject to appropriate discipline.

184 (c) SUPREME COURT.—The supreme court shall receive
185 recommendations from the judicial qualifications commission's
186 hearing panel.

187 (1) The supreme court may accept, reject, or modify in
188 whole or in part the findings, conclusions, and recommendations
189 of the commission and it may order that the justice or judge be
190 subjected to appropriate discipline, or be removed from office
191 with termination of compensation for willful or persistent
192 failure to perform judicial duties or for other conduct
193 unbecoming a member of the judiciary demonstrating a present
194 unfitness to hold office, or be involuntarily retired for any
195 permanent disability that seriously interferes with the
196 performance of judicial duties. Malafides, scienter or moral
197 turpitude on the part of a justice or judge shall not be
198 required for removal from office of a justice or judge whose
199 conduct demonstrates a present unfitness to hold office. After
200 the filing of a formal proceeding and upon request of the
201 investigative panel, the supreme court may suspend the justice
202 or judge from office, with or without compensation, pending
203 final determination of the inquiry.

204 (2) The supreme court may award costs to the prevailing
205 party.

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

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209 (e) PROCEEDINGS INVOLVING SUPREME COURT JUSTICE.—

210 Notwithstanding any of the foregoing provisions of this section,
211 if the person who is the subject of proceedings by the judicial
212 qualifications commission is a justice of the supreme court of
213 Florida all justices of such court automatically shall be
214 disqualified to sit as justices of such court with respect to
215 all proceedings therein concerning such person and the supreme
216 court for such purposes shall be composed of a panel consisting
217 of the seven chief judges of the judicial circuits of the state
218 of Florida most senior in tenure of judicial office as circuit
219 judge. For purposes of determining seniority of such circuit
220 judges in the event there be judges of equal tenure in judicial
221 office as circuit judge the judge or judges from the lower
222 numbered circuit or circuits shall be deemed senior. In the
223 event any such chief circuit judge is under investigation by the
224 judicial qualifications commission or is otherwise disqualified
225 or unable to serve on the panel, the next most senior chief
226 circuit judge or judges shall serve in place of such
227 disqualified or disabled chief circuit judge.

228 (f) SCHEDULE TO SECTION 12.—

229 (1) Except to the extent inconsistent with the provisions
230 of this section, all provisions of law and rules of court in
231 force on the effective date of this article shall continue in
232 effect until superseded in the manner authorized by the
233 constitution.

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

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

239 b. The investigative panel shall be composed of:

240 1. Four judges,

241 2. Two members of the bar of Florida, and

242 3. Three non-lawyers.

243 c. The hearing panel shall be composed of:

244 1. Two judges,

245 2. Two members of the bar of Florida, and

246 3. Two non-lawyers.

247 d. Membership on the panels may rotate in a manner
248 determined by the rules of the commission provided that no
249 member shall vote as a member of the investigative and hearing
250 panel on the same proceeding.

251 e. The commission shall hire separate staff for each
252 panel.

253 f. The members of the commission shall serve for staggered
254 terms of six years.

255 ~~g. The terms of office of the present members of the~~
256 ~~judicial qualifications commission shall expire upon the~~
257 ~~effective date of the amendments to this section approved by the~~
258 ~~legislature during the regular session of the legislature in~~
259 ~~1996 and new members shall be appointed to serve the following~~
260 ~~staggered terms:~~

261 ~~1. Group I. The terms of five members, composed of two~~
262 ~~electors as set forth in s. 12(a)(1)c. of Article V, one member~~
263 ~~of the bar of Florida as set forth in s. 12(a)(1)b. of Article~~
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264 ~~V, one judge from the district courts of appeal and one circuit~~
265 ~~judge as set forth in s. 12(a)(1)a. of Article V, shall expire~~
266 ~~on December 31, 1998.~~

267 ~~2. Group II. The terms of five members, composed of one~~
268 ~~elector as set forth in s. 12(a)(1)c. of Article V, two members~~
269 ~~of the bar of Florida as set forth in s. 12(a)(1)b. of Article~~
270 ~~V, one circuit judge and one county judge as set forth in s.~~
271 ~~12(a)(1)a. of Article V shall expire on December 31, 2000.~~

272 ~~3. Group III. The terms of five members, composed of two~~
273 ~~electors as set forth in s. 12(a)(1)c. of Article V, one member~~
274 ~~of the bar of Florida as set forth in s. 12(a)(1)b., one judge~~
275 ~~from the district courts of appeal and one county judge as set~~
276 ~~forth in s. 12(a)(1)a. of Article V, shall expire on December~~
277 ~~31, 2002.~~

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

280 ~~h.i.~~ Selection of members by district courts of appeal
281 judges, circuit judges, and county court judges, shall be by no
282 less than a majority of the members voting at the respective
283 courts' conferences. Selection of members by the board of
284 governors of the bar of Florida shall be by no less than a
285 majority of the board.

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

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

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292
293 BE IT FURTHER RESOLVED that the following statement be
294 placed on the ballot:

295 CONSTITUTIONAL AMENDMENT

296 ARTICLE V, SECTIONS 2, 11, AND 12

297 STATE COURTS.—Proposing a revision of Article V of the
298 State Constitution relating to the judiciary.

299 The State Constitution authorizes the Supreme Court to
300 adopt rules for the practice and procedure in all courts. The
301 constitution further provides that a rule of court may be
302 repealed by a general law enacted by a two-thirds vote of the
303 membership of each house of the Legislature. This proposed
304 constitutional revision eliminates the requirement that a
305 general law repealing a court rule pass by a two-thirds vote of
306 each house, thereby providing that the Legislature may repeal a
307 rule of court by a general law approved by a majority vote of
308 each house of the Legislature that expresses the policy behind
309 the repeal. The court could readopt the rule in conformity with
310 the public policy expressed by the Legislature, but if the
311 Legislature determines that a rule has been readopted and
312 repeals the readopted rule, this proposed revision prohibits the
313 court from further readopting the repealed rule without the
314 Legislature's prior approval. Under current law, rules of the
315 judicial nominating commissions and the Judicial Qualifications
316 Commission may be repealed by general law enacted by a majority
317 vote of the membership of each house of the Legislature. Under
318 this proposed revision, a vote to repeal those rules is changed

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319 to repeal by general law enacted by a majority vote of the
320 legislators present.

321 Under current law, the Governor appoints a justice of the
322 Supreme Court from a list of nominees provided by a judicial
323 nominating commission, and appointments by the Governor are not
324 subject to confirmation. This revision requires Senate
325 confirmation of a justice of the Supreme Court before the
326 appointee can take office. If the Senate votes not to confirm
327 the appointment, the judicial nominating commission must
328 reconvene and may not renominate any person whose prior
329 appointment to fill the same vacancy was not confirmed by the
330 Senate. For the purpose of confirmation, the Senate may meet at
331 any time. If the Senate fails to vote on the appointment of a
332 justice within 90 days, the justice will be deemed confirmed and
333 will take office.

334 The Judicial Qualifications Commission is an independent
335 commission created by the State Constitution to investigate and
336 prosecute before the Florida Supreme Court alleged misconduct by
337 a justice or judge. Currently under the constitution, commission
338 proceedings are confidential until formal charges are filed by
339 the investigative panel of the commission. Once formal charges
340 are filed, the formal charges and all further proceedings of the
341 commission are public. Currently, the constitution authorizes
342 the House of Representatives to impeach a justice or judge.
343 Further, the Speaker of the House of Representatives may
344 request, and the Judicial Qualifications Commission must make
345 available, all information in the commission's possession for
346 use in deciding whether to impeach a justice or judge. This

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347 proposed revision requires the commission to make all of its
348 files available to the Speaker of the House of Representatives
349 but provides that such files would remain confidential during
350 any investigation by the House of Representatives and until such
351 information is used in the pursuit of an impeachment of a
352 justice or judge. This revision also removes the power of the
353 Governor to request files of the Judicial Qualifications
354 Commission to conform to a prior constitutional change.

355 This revision also makes technical and clarifying additions
356 and deletions relating to the selection of chief judges of a
357 circuit and relating to the Judicial Qualifications Commission,
358 and makes other nonsubstantive conforming and technical changes
359 in the judicial article of the constitution.

360
361 BE IT FURTHER RESOLVED that the following statement be
362 placed on the ballot if a court declares the preceding statement
363 defective and the decision of the court is not reversed:

364 CONSTITUTIONAL AMENDMENT

365 ARTICLE V, SECTIONS 2, 11, AND 12

366 JUDICIARY.—Proposing a revision of the Judiciary Article of
367 the Florida Constitution; revising standards and procedures for
368 legislative repeal of a court rule and the Supreme Court's
369 readoption of a rule repealed by the Legislature; providing for
370 Senate confirmation of an appointment of a Supreme Court
371 justice; allowing the House of Representatives to review
372 confidential files of the Judicial Qualifications Commission
373 under any circumstances; providing that such files shall remain
374 confidential until the House of Representatives initiates

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375 impeachment proceedings; and making other technical, clarifying,
376 and conforming revisions.

377
378 BE IT FURTHER RESOLVED that the following statement be
379 placed on the ballot if a court declares the preceding
380 statements defective and the decision of the court is not
381 reversed:

382 CONSTITUTIONAL AMENDMENT

383 ARTICLE V, SECTIONS 2, 11, AND 12

384 STATE COURTS.—Proposing a revision to Article V of the
385 State Constitution relating to the judiciary; changing the
386 authority of the Legislature to repeal a court rule by two-
387 thirds vote of the membership of each house to a simple majority
388 of each house; limiting the Supreme Court's ability to readopt a
389 rule repealed by the Legislature; requiring Senate confirmation
390 before a justice may take office; providing that if the Senate
391 does not act within 90 days the nominee is deemed confirmed as a
392 justice; allowing the Senate to meet outside of regular session
393 without having the House of Representatives convene at the same
394 time; deleting outdated references related to the Judicial
395 Qualifications Commission; requiring the Judicial Qualifications
396 Commission to provide the House of Representatives access to
397 records; providing for confidentiality of records provided to
398 the House of Representatives until impeachment is initiated;
399 making conforming and technical changes.

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401 -----

402 **T I T L E A M E N D M E N T**

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403 Remove lines 431-444 and insert:
404 A joint resolution proposing a revision of Article V of
405 the State Constitution, relating to the judiciary,
406 consisting of amendments to Sections 2, 11, and 12 of
407 Article V of the State Constitution; revising provisions
408 relating to repeal of court rules; limiting readoption of
409 a repealed court rule; providing for Senate confirmation
410 of Supreme Court justices; requiring the Judicial
411 Qualifications Commission to make all of its files
412 available to the Speaker of the House of Representatives;
413 providing for confidentiality of records provided to the
414 House of Representatives until impeachment is initiated;
415 making other conforming and modernizing changes to the
416 State Constitution regarding the judicial branch.