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LEGISLATIVE ACTION

Senate	.	House
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Floor: WD/3R	.	
05/02/2011 06:01 PM	.	
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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, 12, and 14 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



802676

JUDICIARY

SECTION 2. Administration; practice and procedure.—

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 Rules of court may be repealed by general law that expresses the policy behind the repeal enacted by two-thirds vote of the membership of each house of the legislature. The court may readopt the repealed rule only in conformity with the public policy expressed by the legislature.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

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

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



802676

41 majority, by the chief justice. The chief judge of a district  
42 court shall be responsible for the administrative supervision of  
43 the district court.

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

49 SECTION 4. District courts of appeal.—

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

55 (b) JURISDICTION.—

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

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

66 (3) A district court of appeal or any judge thereof may  
67 issue writs of habeas corpus returnable before the court or any  
68 judge thereof or before any circuit judge within the territorial  
69 jurisdiction of the court. A district court of appeal may issue



802676

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

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

84 SECTION 11. Vacancies.—

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

93 (b) The governor shall fill each vacancy on a circuit court  
94 or on a county court, wherein the judges are elected by a  
95 majority vote of the electors, by appointing for a term ending  
96 on the first Tuesday after the first Monday in January of the  
97 year following the next primary and general election occurring  
98 at least one year after the date of appointment, one of not



802676

99 fewer than three persons nor more than six persons nominated by  
100 the appropriate judicial nominating commission. An election  
101 shall be held to fill that judicial office for the term of the  
102 office beginning at the end of the appointed term.

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

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

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



802676

128 legislature, or by the supreme court, five justices concurring.  
129 Except for deliberations of the judicial nominating commissions,  
130 the proceedings of the commissions and their records shall be  
131 open to the public.

132 SECTION 12. Discipline; removal and retirement.-

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

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



802676

157 selected by the judges of those courts;

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

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

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

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

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



802676

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

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

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





802676

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

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

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

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

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



802676

244 impeachment.

245 (e) PROCEEDINGS INVOLVING SUPREME COURT JUSTICE.—

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

264 (f) SCHEDULE TO SECTION 12.—

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

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

272 a. The commission shall be divided, as determined by the



802676

273 chairperson, into one investigative panel and one hearing panel  
274 to meet the responsibilities set forth in this section.

275 b. The investigative panel shall be composed of:

276 1. Four judges,

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

278 3. Three non-lawyers.

279 c. The hearing panel shall be composed of:

280 1. Two judges,

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

282 3. Two non-lawyers.

283 d. Membership on the panels may rotate in a manner

284 determined by the rules of the commission provided that no

285 member shall vote as a member of the investigative and hearing

286 panel on the same proceeding.

287 e. The commission shall hire separate staff for each panel.

288 f. The members of the commission shall serve for staggered  
289 terms of six years.

290 ~~g. The terms of office of the present members of the~~  
291 ~~judicial qualifications commission shall expire upon the~~  
292 ~~effective date of the amendments to this section approved by the~~  
293 ~~legislature during the regular session of the legislature in~~  
294 ~~1996 and new members shall be appointed to serve the following~~  
295 ~~staggered terms:~~

296 ~~1. Group I. The terms of five members, composed of two~~  
297 ~~electors as set forth in s. 12(a)(1)c. of Article V, one member~~  
298 ~~of the bar of Florida as set forth in s. 12(a)(1)b. of Article~~  
299 ~~V, one judge from the district courts of appeal and one circuit~~  
300 ~~judge as set forth in s. 12(a)(1)a. of Article V, shall expire~~  
301 ~~on December 31, 1998.~~



802676

302           ~~2. Group II. The terms of five members, composed of one~~  
303 ~~elector as set forth in s. 12(a)(1)c. of Article V, two members~~  
304 ~~of the bar of Florida as set forth in s. 12(a)(1)b. of Article~~  
305 ~~V, one circuit judge and one county judge as set forth in s.~~  
306 ~~12(a)(1)a. of Article V shall expire on December 31, 2000.~~

307           ~~3. Group III. The terms of five members, composed of two~~  
308 ~~electors as set forth in s. 12(a)(1)c. of Article V, one member~~  
309 ~~of the bar of Florida as set forth in s. 12(a)(1)b., one judge~~  
310 ~~from the district courts of appeal and one county judge as set~~  
311 ~~forth in s. 12(a)(1)a. of Article V, shall expire on December~~  
312 ~~31, 2002.~~

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

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

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

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

327           SECTION 14. Funding.—

328           (a) All justices and judges shall be compensated only by  
329 state salaries fixed by general law. Funding for the state  
330 courts system, state attorneys' offices, public defenders'



802676

331 offices, and court-appointed counsel, except as otherwise  
332 provided in subsection (c), shall be provided from state  
333 revenues appropriated by general law.

334 (b) All funding for the offices of the clerks of the  
335 circuit and county courts performing court-related functions,  
336 except as otherwise provided in this subsection and subsection  
337 (c), shall be provided by adequate and appropriate filing fees  
338 for judicial proceedings and service charges and costs for  
339 performing court-related functions as required by general law.  
340 Selected salaries, costs, and expenses of the state courts  
341 system may be funded from appropriate filing fees for judicial  
342 proceedings and service charges and costs for performing court-  
343 related functions, as provided by general law. Where the  
344 requirements of either the United States Constitution or the  
345 Constitution of the State of Florida preclude the imposition of  
346 filing fees for judicial proceedings and service charges and  
347 costs for performing court-related functions sufficient to fund  
348 the court-related functions of the offices of the clerks of the  
349 circuit and county courts, the state shall provide, as  
350 determined by the legislature, adequate and appropriate  
351 supplemental funding from state revenues appropriated by general  
352 law.

353 (c) No county or municipality, except as provided in this  
354 subsection, shall be required to provide any funding for the  
355 state courts system, state attorneys' offices, public defenders'  
356 offices, court-appointed counsel or the offices of the clerks of  
357 the circuit and county courts performing court-related  
358 functions. Counties shall be required to fund the cost of  
359 communications services, existing radio systems, existing multi-



802676

360 agency criminal justice information systems, and the cost of  
361 construction or lease, maintenance, utilities, and security of  
362 facilities for the trial courts, public defenders' offices,  
363 state attorneys' offices, and the offices of the clerks of the  
364 circuit and county courts performing court-related functions.  
365 Counties shall also pay reasonable and necessary salaries,  
366 costs, and expenses of the state courts system to meet local  
367 requirements as determined by general law.

368 (d) The judiciary shall have no power to fix  
369 appropriations.

370 BE IT FURTHER RESOLVED that the following statement be  
371 placed on the ballot:

372 CONSTITUTIONAL AMENDMENT

373 ARTICLE V, SECTIONS 2, 4, 11, 12, AND 14

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

376 Under current law, the Governor appoints a justice from a  
377 list of nominees provided by a judicial nominating commission,  
378 and appointments by the Governor are not subject to  
379 confirmation. This revision requires Senate confirmation of a  
380 justice before the appointee can take office. If the Senate  
381 votes not to confirm the appointment, the judicial nominating  
382 commission must reconvene and may not renominate any person  
383 whose prior appointment to fill the same vacancy was not  
384 confirmed by the Senate. For the purpose of confirmation, the  
385 Senate may meet at any time. If the Senate does not vote against  
386 confirmation within 90 days, the justice will be deemed  
387 confirmed and will take office.

388 The State Constitution authorizes the Supreme Court to



802676

389 adopt rules for the practice and procedure in all courts. The  
390 constitution further provides that a rule of court may be  
391 repealed by a general law enacted by a two-thirds vote of the  
392 membership of each house of the Legislature. This proposed  
393 constitutional revision eliminates the requirement that a  
394 general law repealing a court rule pass by a two-thirds vote of  
395 each house. The Legislature could repeal a rule of court by a  
396 general law approved by a majority vote of each house of the  
397 Legislature that expresses the policy behind the repeal. The  
398 court could readopt the rule in conformity with the public  
399 policy expressed by the Legislature, but if the Legislature  
400 repeals the readopted rule, this proposed revision prohibits the  
401 court from readopting the repealed rule without the  
402 Legislature's prior approval.

403 The Judicial Qualifications Commission is an independent  
404 commission created by the State Constitution to investigate and  
405 prosecute before the Florida Supreme Court alleged misconduct by  
406 a justice or judge. Currently under the constitution, commission  
407 proceedings are confidential until formal charges are filed by  
408 the investigative panel of the commission. Once formal charges  
409 are filed, the formal charges and all further proceedings of the  
410 commission are public. Currently, the constitution authorizes  
411 the House of Representatives to impeach a justice or judge.  
412 Further, the Speaker of the House of Representatives may  
413 request, and the Judicial Qualifications Commission must make  
414 available, all information in the commission's possession for  
415 use in deciding whether to impeach a justice or judge. This  
416 proposed revision requires the commission to make all of its  
417 files available to the Speaker of the House of Representatives,



802676

418 rather than just the file of a justice or judge under  
419 investigation by the House of Representatives. Such files would  
420 maintain their confidentiality unless the House of  
421 Representatives initiates impeachment proceedings against a  
422 justice or judge, in which case the files related to that  
423 justice or judge may be open. This revision deletes a  
424 requirement that a general law repealing a commission rule be  
425 passed by a majority vote of the membership of each house of the  
426 Legislature and revises the number of Supreme Court justices  
427 needed to repeal such a rule.

428 This revision will take effect January 7, 2013, if approved  
429 by the electors. This revision makes other conforming and  
430 modernizing changes to the State Constitution regarding the  
431 judicial system; removing outdated schedules related to the  
432 Judicial Qualifications Commission; and making conforming and  
433 technical changes in the judicial articles of the constitution.  
434

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

438 CONSTITUTIONAL AMENDMENT

439 ARTICLE V, SECTIONS 2, 4, 11, 12, AND 14

440 JUDICIARY.—Proposing a revision of the Judiciary Article of  
441 the Florida Constitution; requiring Senate confirmation for  
442 appointment of a Supreme Court justice; providing standards and  
443 procedures for legislative repeal of a court rule; allowing  
444 legislative review of confidential files of the Judicial  
445 Qualifications Commission; and making other ancillary  
446 amendments, including, but not limited to, technical and





802676

447 conforming amendments.

448

449 BE IT FURTHER RESOLVED that the following statement be  
450 placed on the ballot if a court declares the preceding  
451 statements defective and the decision of the court is not  
452 reversed:

453

CONSTITUTIONAL AMENDMENT

454

ARTICLE V, SECTIONS 2, 4, 11, 12, AND 14

455

456 STATE COURTS.—Proposing a revision to Article V of the  
457 State Constitution relating to the judiciary; changing the  
458 authority of the Legislature to repeal a court rule by 2/3 vote  
459 of the membership of each house to a simple majority of each  
460 house; limiting the Supreme Court's ability to readopt a rule  
461 repealed by the Legislature; requiring Senate confirmation  
462 before a justice may take office; providing that if the Senate  
463 does not act within 90 days the nominee is deemed confirmed as a  
464 justice; allowing the Senate to meet outside of regular session  
465 without having the House of Representatives convene at the same  
466 time; deleting outdated references; requiring the Judicial  
467 Qualifications Commission to provide the House of  
468 Representatives access to records; providing for confidentiality  
469 of records.

469

470 ===== T I T L E A M E N D M E N T =====

471 And the title is amended as follows:

472

473

Delete everything before the resolving clause  
and insert:

474

A bill to be entitled

475

A joint resolution proposing a revision of Article V



802676

476 of the State Constitution, relating to the judiciary,  
477 consisting of amendments to Sections 2, 4, 11, 12, and  
478 14 of Article V of the State Constitution; revising  
479 provisions relating to repeal of court rules; limiting  
480 readoption of a repealed court rule; providing for  
481 Senate confirmation of Supreme Court justices;  
482 requiring the Judicial Qualifications Commission to  
483 make all of its files available to the Speaker of the  
484 House of Representatives; revising provisions relating  
485 to repeal of commission rules; making other conforming  
486 and modernizing changes to the State Constitution  
487 regarding the judicial system; providing an effective  
488 date.