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Senate Joint Resolution No. 978

A joint resolution proposing amendments to sections 11, and 12 of Article V of the State Constitution relating to the Judiciary.

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

That the following amendments to Sections 11, and 12 of Article V of the State Constitution are 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 specially authorized by law for that purpose:

ARTICLE V  
JUDICIARY

SECTION 11. Vacancies.—

(a) The governor shall fill each vacancy on the supreme court or on a district court of appeal by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission.

(b) The governor shall fill each vacancy on a circuit court or on a county court by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission. An election shall be held to fill that judicial office for the term of the office beginning at the end of the appointed term.

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

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 Such rules, or any part thereof, may be repealed by general law enacted by a majority vote of the membership of each house of the legislature, or by the supreme court, five justices concurring.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

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 ~~reprimand~~ of a 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), warrants such discipline ~~a reprimand~~. For purposes of this section, discipline is defined as any or all of the following: reprimand, fine, suspension with or without pay, or lawyer discipline. The commission shall have jurisdiction over justices and judges regarding allegations that misconduct occurred before or during service as a justice or judge if a complaint is made no later than one year following service as a justice or judge. The commission shall have jurisdiction regarding allegations of incapacity during service as a justice or judge. The commission shall be composed of:

a.(1) Two judges of district courts of appeal selected by the judges of those courts, two circuit judges selected by the judges of the circuit courts and two judges of county courts selected by the judges of those courts;

b.(2) ~~Four~~ Two electors who reside in the state, who are members of the bar of Florida, and who shall be chosen by the governing body of the bar of Florida; and

c.(3) Five electors who reside in the state, who have never held judicial office or been members of the bar of Florida, and who shall be appointed by the governor.

(2)(b) The members of the judicial qualifications commission shall serve staggered terms, not to exceed six years, as prescribed by general law. No member of the commission except a ~~justice or judge~~ shall be eligible for state judicial office while acting as so long as he is a member of the commission and for a period of two years thereafter. No member of the commission shall hold office in a political party or participate in any campaign for judicial office or hold public office; provided that a judge may ~~participate in his own~~ campaign for judicial office and hold that office. The commission shall elect one of its members as its chairperson ~~chairman~~.

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

(4)(d) The commission shall adopt rules regulating its proceedings, the filling of vacancies by the appointing authorities, the disqualification of members, the rotation of members between the panels, and the temporary replacement of disqualified or incapacitated members. The commission's rules, or any part thereof, may be repealed by general law enacted by a majority vote of the membership of each house of the legislature, or by the supreme court, five justices concurring. The commission shall have power to issue subpoenas. Until formal charges against a justice or judge are filed by the investigative panel ~~commission~~ with the clerk of the supreme court of Florida all proceedings by or before the commission shall be confidential; provided, however,

upon a finding of probable cause and the filing by the investigative panel ~~commission~~ with said clerk of such formal charges against a justice or judge such charges and all further proceedings before the commission shall be public. ~~The commission may with seven members concurring recommend to the supreme court the temporary suspension of any justice or judge against whom formal charges are pending.~~

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

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

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

(1) The supreme court may accept, reject, or modify in whole or in part the findings, conclusions, and recommendations of the commission and it

(f) ~~Upon recommendation of two-thirds of the members of the judicial qualifications commission, the supreme court may order that the justice or judge be subjected to appropriate discipline, disciplined by appropriate reprimand, or be removed from office with termination of compensation for willful or persistent failure to perform judicial his duties or for other conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold office, or be involuntarily retired for any permanent disability that seriously interferes with the performance of judicial his duties. Malafides, scienter or moral turpitude on the part of a justice or judge shall not be required for removal from office of a justice or judge whose conduct demonstrates a present unfitness to hold office. After the filing of a formal proceeding and upon request of the investigative panel ~~commission~~, the supreme court may suspend the justice or judge from office, with or without compensation, pending final determination of the inquiry.~~

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

(d)(g) The power of removal conferred by this section shall be both alternative and cumulative to the power of impeachment ~~and to the power of suspension by the governor and removal by the senate.~~

(e)(h) Notwithstanding any of the foregoing provisions of this section, if the person who is the subject of proceedings by the judicial qualifications commission is a justice of the supreme court of Florida all justices of such court automatically shall be disqualified to sit as justices of such court with respect to all proceedings therein concerning such person and the supreme court for such purposes shall be composed of a panel consisting of the seven chief judges of the judicial circuits of the state of Florida most senior in tenure of judicial office as circuit judge. For purposes of determining seniority of such circuit judges in the event there be judges of equal tenure in judicial office as circuit judge or judge of the equal tenured in circuit or circuits shall be deemed senior. In the event any such chief circuit judge is under investigation by the judicial qualifications commission or is otherwise disqualified or unable to serve on the panel, the next most senior chief circuit judge or judges shall serve in place of such disqualified or disabled chief circuit judge.

(f)(i) SCHEDULE TO SECTION 12.—

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

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

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

b. The investigative panel shall be composed of:

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

c. The hearing panel shall be composed of:

1. Two judges.
2. Two members of the bar of Florida, and
3. Two non-lawyers.

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

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

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

~~g.(1)~~ The terms of office of the present members of the judicial qualifications commission shall expire upon the effective date of the amendments to this section approved by the legislature during the regular session of the legislature in 1996 on January 1, 1975 and new members shall be appointed to serve the following staggered terms:

1.a. Group I.—The terms of five members, composed of two electors as set forth in s. ~~12(a)(1)c. 12(a)(3)~~ of Article V, one member of the bar of Florida as set forth in s. ~~12(a)(1)b. 12(a)(2)~~ of Article V, one judge from the district courts of appeal and one circuit judge as set forth in s. ~~12(a)(1)a. 12(a)(1)~~ of Article V, shall expire on December 31, 1998 ~~1976~~.

2.b. Group II.—The terms of ~~five four~~ members, composed of one elector as set forth in s. ~~12(a)(1)c. 12(a)(3)~~ of Article V, one member of the bar of Florida as set forth in s. ~~12(a)(1)b. 12(a)(2)~~ of Article V, one circuit judge and one county judge as set forth in s. ~~12(a)(1)a. 12(a)(1)~~ of Article V shall expire on December 31, 2000 ~~1978~~.

3.e. Group III.—The terms of ~~five four~~ members, composed of two electors as set forth in s. ~~12(a)(1)c. 12(a)(3)~~ of Article V, one member of the bar of Florida as set forth in s. 12(a)(1)b., one judge from the district courts of appeal and one county judge as set forth in s. ~~12(a)(1)a. 12(a)(1)~~ of Article V, shall expire on December 31, 2002 ~~1980~~.

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

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

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

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

~~(2)~~ The 1976 amendment to section 12 of Article V, if submitted at a special election, shall take effect upon approval by the electors of Florida.

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

CONSTITUTIONAL AMENDMENT  
ARTICLE V, SECTIONS 11 and 12

JUDICIARY.—Proposing amendments to the State Constitution to allow judicial nominating commissions to recommend from three up to six persons to fill a court vacancy; and to restructure the Judicial Qualifications Commission and permit additional sanctions for judicial misconduct.

Filed in Office Secretary of State May 17, 1996.