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CS/HJR 7111, Engrossed 3

2011 Legislature

House Joint Resolution

A joint resolution proposing a revision of Article V of the State Constitution, relating to the judiciary, consisting of amendments to Sections 2, 11, and 12 of Article V of the State Constitution; revising provisions relating to repeal of court rules; limiting re-adoption of a repealed court rule; providing for Senate confirmation of Supreme Court justices; requiring the Judicial Qualifications Commission to make all of its files available to the Speaker of the House of Representatives; providing for confidentiality of records provided to the House of Representatives until impeachment is initiated; making other conforming and modernizing changes to the State Constitution regarding the judicial branch.

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

That the following revision to Sections 2, 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

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,

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29 | the transfer to the court having jurisdiction of any proceeding
 30 | when the jurisdiction of another court has been improvidently
 31 | invoked, and a requirement that no cause shall be dismissed
 32 | because an improper remedy has been sought. The supreme court
 33 | shall adopt rules to allow it ~~the court~~ and the district courts
 34 | of appeal to submit questions relating to military law to the
 35 | federal Court of Appeals for the Armed Forces for an advisory
 36 | opinion. Rules of court may be repealed by general law that
 37 | expresses the policy behind the repeal enacted by two-thirds
 38 | vote of the membership of each house of the legislature. The
 39 | court may readopt the repealed rule only in conformity with the
 40 | public policy expressed by the legislature. If the legislature
 41 | determines that a rule has been readopted and repeals the
 42 | readopted rule, the rule may not be readopted thereafter without
 43 | prior approval of the legislature.

44 | (b) The chief justice of the supreme court shall be chosen
 45 | by a majority of the members of the court; shall be the chief
 46 | administrative officer of the judicial system; and shall have
 47 | the power to assign justices or judges, including consenting
 48 | retired justices or judges, to temporary duty in any court for
 49 | which the judge is qualified and to delegate to a chief judge of
 50 | a judicial circuit the power to assign judges for duty in that
 51 | circuit.

52 | (c) A chief judge for each district court of appeal shall
 53 | be chosen by a majority of the judges thereof or, if there is no
 54 | majority, by the chief justice. The chief judge shall be
 55 | responsible for the administrative supervision of the court.

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56 (d) A chief judge in each circuit shall be chosen from
 57 among the circuit judges as provided by supreme court rule. The
 58 chief judge of a circuit shall be responsible for the
 59 administrative supervision of the circuit courts and county
 60 courts in the ~~his~~ circuit.

61 SECTION 11. Vacancies.—

62 (a) Whenever a vacancy occurs in a judicial office to
 63 which election for retention applies, the governor shall fill
 64 the vacancy by appointing for a term ending on the first Tuesday
 65 after the first Monday in January of the year following the next
 66 general election occurring at least one year after the date of
 67 appointment, one of not fewer than three persons nor more than
 68 six persons nominated by the appropriate judicial nominating
 69 commission.

70 (b) The governor shall fill each vacancy on a circuit
 71 court or on a county court, wherein the judges are elected by a
 72 majority vote of the electors, by appointing for a term ending
 73 on the first Tuesday after the first Monday in January of the
 74 year following the next primary and general election occurring
 75 at least one year after the date of appointment, one of not
 76 fewer than three persons nor more than six persons nominated by
 77 the appropriate judicial nominating commission. An election
 78 shall be held to fill that judicial office for the term of the
 79 office beginning at the end of the appointed term.

80 (c) The nominations shall be made within thirty days from
 81 the occurrence of a vacancy unless the period is extended by the
 82 governor for a time not to exceed thirty days. The governor

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83 shall make the appointment within sixty days after the
 84 nominations have been certified to the governor.

85 (d) Each appointment of a justice of the supreme court is
 86 subject to confirmation by the senate. The senate may sit for
 87 the purpose of confirmation regardless of whether the house of
 88 representatives is in session or not. If the senate fails to
 89 vote on the appointment of a justice within 90 days, the justice
 90 shall be deemed confirmed. If the senate votes to not confirm
 91 the appointment, the supreme court judicial nominating
 92 commission shall reconvene as though a new vacancy had occurred
 93 but may not renominate any person whose prior appointment to
 94 fill the same vacancy was not confirmed by the senate. The
 95 appointment of a justice is effective upon confirmation by the
 96 senate.

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

109 SECTION 12. Discipline; removal and retirement.—

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110 (a) JUDICIAL QUALIFICATIONS COMMISSION.—A judicial
 111 qualifications commission is created.

112 (1) There shall be a judicial qualifications commission
 113 vested with jurisdiction to investigate and recommend to the
 114 Supreme Court of Florida the removal from office of any justice
 115 or judge whose conduct, during term of office or otherwise,
 116 ~~occurring on or after November 1, 1966, (without regard to the~~
 117 ~~effective date of this section)~~ demonstrates a present unfitness
 118 to hold office, and to investigate and recommend the discipline
 119 of a justice or judge whose conduct, during term of office or
 120 otherwise ~~occurring on or after November 1, 1966 (without regard~~
 121 ~~to the effective date of this section)~~, warrants such
 122 discipline. For purposes of this section, discipline is defined
 123 as any or all of the following: reprimand, fine, suspension with
 124 or without pay, or lawyer discipline. The commission shall have
 125 jurisdiction over justices and judges regarding allegations that
 126 misconduct occurred before or during service as a justice or
 127 judge if a complaint is made no later than one year following
 128 service as a justice or judge. The commission shall have
 129 jurisdiction regarding allegations of incapacity during service
 130 as a justice or judge. The commission shall be composed of:

131 a. Two judges of district courts of appeal selected by the
 132 judges of those courts, two circuit judges selected by the
 133 judges of the circuit courts and two judges of county courts
 134 selected by the judges of those courts;

135 b. Four electors who reside in the state, who are members
 136 of the bar of Florida, and who shall be chosen by the governing
 137 body of the bar of Florida; and

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

141 (2) The members of the judicial qualifications commission
 142 shall serve staggered terms, not to exceed six years, as
 143 prescribed by general law. No member of the commission except a
 144 judge shall be eligible for state judicial office while acting
 145 as a member of the commission and for a period of two years
 146 thereafter. No member of the commission shall hold office in a
 147 political party or participate in any campaign for judicial
 148 office or hold public office; provided that a judge may campaign
 149 for judicial office and hold that office. The commission shall
 150 elect one of its members as its chairperson.

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

155 (4) The commission shall adopt rules regulating its
 156 proceedings, the filling of vacancies by the appointing
 157 authorities, the disqualification of members, the rotation of
 158 members between the panels, and the temporary replacement of
 159 disqualified or incapacitated members. The commission's rules,
 160 or any part thereof, may be repealed by general law ~~enacted by a~~
 161 ~~majority vote of the membership of each house of the~~
 162 ~~legislature,~~ or by the supreme court, five justices concurring.
 163 The commission shall have power to issue subpoenas. Until formal
 164 charges against a justice or judge are filed by the
 165 investigative panel with the clerk of the supreme court of

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166 Florida all proceedings by or before the commission shall be
 167 confidential; provided, however, upon a finding of probable
 168 cause and the filing by the investigative panel with said clerk
 169 of such formal charges against a justice or judge such charges
 170 and all further proceedings before the commission shall be
 171 public.

172 (5) The commission shall have access to all information
 173 from all executive, legislative and judicial agencies, including
 174 grand juries, subject to the rules of the commission. At any
 175 time, on request of the speaker of the house of representatives
 176 ~~or the governor~~, the commission shall make available to the
 177 house of representatives all information in the possession of
 178 the commission, which information shall remain confidential
 179 during any investigation and until such information is used in
 180 the pursuit ~~for use in consideration~~ of impeachment ~~or~~
 181 ~~suspension, respectively.~~

182 (b) PANELS.—The commission shall be divided into an
 183 investigative panel and a hearing panel as established by rule
 184 of the commission. The investigative panel is vested with the
 185 jurisdiction to receive or initiate complaints, conduct
 186 investigations, dismiss complaints, and upon a vote of a simple
 187 majority of the panel submit formal charges to the hearing
 188 panel. The hearing panel is vested with the authority to receive
 189 and hear formal charges from the investigative panel and upon a
 190 two-thirds vote of the panel recommend to the supreme court the
 191 removal of a justice or judge or the involuntary retirement of a
 192 justice or judge for any permanent disability that seriously
 193 interferes with the performance of judicial duties. Upon a

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194 simple majority vote of the membership of the hearing panel, the
 195 panel may recommend to the supreme court that the justice or
 196 judge be subject to appropriate discipline.

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

200 (1) The supreme court may accept, reject, or modify in
 201 whole or in part the findings, conclusions, and recommendations
 202 of the commission and it may order that the justice or judge be
 203 subjected to appropriate discipline, or be removed from office
 204 with termination of compensation for willful or persistent
 205 failure to perform judicial duties or for other conduct
 206 unbecoming a member of the judiciary demonstrating a present
 207 unfitness to hold office, or be involuntarily retired for any
 208 permanent disability that seriously interferes with the
 209 performance of judicial duties. Malafides, scienter or moral
 210 turpitude on the part of a justice or judge shall not be
 211 required for removal from office of a justice or judge whose
 212 conduct demonstrates a present unfitness to hold office. After
 213 the filing of a formal proceeding and upon request of the
 214 investigative panel, the supreme court may suspend the justice
 215 or judge from office, with or without compensation, pending
 216 final determination of the inquiry.

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

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

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222 (e) PROCEEDINGS INVOLVING SUPREME COURT JUSTICE.—
 223 Notwithstanding any of the foregoing provisions of this section,
 224 if the person who is the subject of proceedings by the judicial
 225 qualifications commission is a justice of the supreme court of
 226 Florida all justices of such court automatically shall be
 227 disqualified to sit as justices of such court with respect to
 228 all proceedings therein concerning such person and the supreme
 229 court for such purposes shall be composed of a panel consisting
 230 of the seven chief judges of the judicial circuits of the state
 231 of Florida most senior in tenure of judicial office as circuit
 232 judge. For purposes of determining seniority of such circuit
 233 judges in the event there be judges of equal tenure in judicial
 234 office as circuit judge the judge or judges from the lower
 235 numbered circuit or circuits shall be deemed senior. In the
 236 event any such chief circuit judge is under investigation by the
 237 judicial qualifications commission or is otherwise disqualified
 238 or unable to serve on the panel, the next most senior chief
 239 circuit judge or judges shall serve in place of such
 240 disqualified or disabled chief circuit judge.

241 (f) SCHEDULE TO SECTION 12.—

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

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

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

252 b. The investigative panel shall be composed of:

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

256 c. The hearing panel shall be composed of:

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

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

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

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

268 ~~g. The terms of office of the present members of the~~
 269 ~~judicial qualifications commission shall expire upon the~~
 270 ~~effective date of the amendments to this section approved by the~~
 271 ~~legislature during the regular session of the legislature in~~
 272 ~~1996 and new members shall be appointed to serve the following~~
 273 ~~staggered terms:~~

- 274 ~~1. Group I. The terms of five members, composed of two~~
 275 ~~electors as set forth in s. 12(a)(1)c. of Article V, one member~~
 276 ~~of the bar of Florida as set forth in s. 12(a)(1)b. of Article~~

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277 ~~V, one judge from the district courts of appeal and one circuit~~
 278 ~~judge as set forth in s. 12(a)(1)a. of Article V, shall expire~~
 279 ~~on December 31, 1998.~~

280 ~~2. Group II. The terms of five members, composed of one~~
 281 ~~elector as set forth in s. 12(a)(1)c. of Article V, two members~~
 282 ~~of the bar of Florida as set forth in s. 12(a)(1)b. of Article~~
 283 ~~V, one circuit judge and one county judge as set forth in s.~~
 284 ~~12(a)(1)a. of Article V shall expire on December 31, 2000.~~

285 ~~3. Group III. The terms of five members, composed of two~~
 286 ~~electors as set forth in s. 12(a)(1)c. of Article V, one member~~
 287 ~~of the bar of Florida as set forth in s. 12(a)(1)b., one judge~~
 288 ~~from the district courts of appeal and one county judge as set~~
 289 ~~forth in s. 12(a)(1)a. of Article V, shall expire on December~~
 290 ~~31, 2002.~~

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

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

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

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

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

CONSTITUTIONAL AMENDMENT

ARTICLE V, SECTIONS 2, 11, AND 12

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

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

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332 to repeal by general law enacted by a majority vote of the
 333 legislators present.

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

347 The Judicial Qualifications Commission is an independent
 348 commission created by the State Constitution to investigate and
 349 prosecute before the Florida Supreme Court alleged misconduct by
 350 a justice or judge. Currently under the constitution, commission
 351 proceedings are confidential until formal charges are filed by
 352 the investigative panel of the commission. Once formal charges
 353 are filed, the formal charges and all further proceedings of the
 354 commission are public. Currently, the constitution authorizes
 355 the House of Representatives to impeach a justice or judge.
 356 Further, the Speaker of the House of Representatives may
 357 request, and the Judicial Qualifications Commission must make
 358 available, all information in the commission's possession for
 359 use in deciding whether to impeach a justice or judge. This

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360 proposed revision requires the commission to make all of its
 361 files available to the Speaker of the House of Representatives
 362 but provides that such files would remain confidential during
 363 any investigation by the House of Representatives and until such
 364 information is used in the pursuit of an impeachment of a
 365 justice or judge. This revision also removes the power of the
 366 Governor to request files of the Judicial Qualifications
 367 Commission to conform to a prior constitutional change.

368 This revision also makes technical and clarifying additions
 369 and deletions relating to the selection of chief judges of a
 370 circuit and relating to the Judicial Qualifications Commission,
 371 and makes other nonsubstantive conforming and technical changes
 372 in the judicial article of the constitution.

373
 374 BE IT FURTHER RESOLVED that the following statement be
 375 placed on the ballot if a court declares the preceding statement
 376 defective and the decision of the court is not reversed:

377 CONSTITUTIONAL AMENDMENT

378 ARTICLE V, SECTIONS 2, 11, AND 12

379 JUDICIARY.—Proposing a revision of the Judiciary Article of
 380 the Florida Constitution; revising standards and procedures for
 381 legislative repeal of a court rule and the Supreme Court's
 382 readoption of a rule repealed by the Legislature; providing for
 383 Senate confirmation of an appointment of a Supreme Court
 384 justice; allowing the House of Representatives to review
 385 confidential files of the Judicial Qualifications Commission
 386 under any circumstances; providing that such files shall remain
 387 confidential until the House of Representatives initiates

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388 impeachment proceedings; and making other technical, clarifying,
 389 and conforming revisions.

390

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

395

CONSTITUTIONAL AMENDMENT

396

ARTICLE V, SECTIONS 2, 11, AND 12

397

398 STATE COURTS.—Proposing a revision to Article V of the
 399 State Constitution relating to the judiciary; changing the
 400 authority of the Legislature to repeal a court rule by two-
 401 thirds vote of the membership of each house to a simple majority
 402 of each house; limiting the Supreme Court's ability to readopt a
 403 rule repealed by the Legislature; requiring Senate confirmation
 404 before a justice may take office; providing that if the Senate
 405 does not act within 90 days the nominee is deemed confirmed as a
 406 justice; allowing the Senate to meet outside of regular session
 407 without having the House of Representatives convene at the same
 408 time; deleting outdated references related to the Judicial
 409 Qualifications Commission; requiring the Judicial Qualifications
 410 Commission to provide the House of Representatives access to
 411 records; providing for confidentiality of records provided to
 412 the House of Representatives until impeachment is initiated;
 making conforming and technical changes.