

House Bill 126

By: Representatives Willard of the 51st, Meadows of the 5th, Oliver of the 82nd, Kelley of the 16th, Coomer of the 14th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 15 of the Official Code of Georgia Annotated, relating to
2 general provisions for courts, so as to change provisions relating to the Judicial
3 Qualifications Commission; to expand the membership of the commission and provide for
4 panels; to provide for duties and responsibilities; to provide for appointment of members,
5 filling of vacancies, and confirmation; to provide for definitions; to provide for rules; to
6 provide for confidentiality and exceptions; to provide for a short title; to provide for related
7 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 This Act shall be known and may be cited as "The Judicial Qualifications Commission
11 Improvement Act of 2017."

12 **SECTION 2.**

13 Chapter 1 of Title 15 of the Official Code of Georgia Annotated, relating to general
14 provisions for courts, is amended by revising Code Section 15-1-21, relating to the creation
15 of the Judicial Qualifications Commission, powers, composition, appointment, term, removal
16 of members, procedures, and confidentiality, as follows:

17 "15-1-21.

18 (a) Pursuant to Article VI, Section VII, Paragraph VI of Section VII of Article VI of the
19 Constitution, there is hereby created the Judicial Qualifications Commission, which shall
20 have the power to discipline, remove, and cause involuntary retirement of judges in
21 accordance with such Paragraph. As used in this Code section, the term 'commission'
22 means the Judicial Qualifications Commission.

23 (b) The ~~Judicial Qualifications Commission~~ commission shall consist of ~~seven~~ ten
24 members who shall be subject to confirmation by the Senate.

25 (c) From January 1, 2017, until June 30, 2017, the members of the commission shall be
 26 as follows:

27 (1) Two judges of any court of record, appointed by the Supreme Court;

28 (2) One member of the State Bar of Georgia who shall have been an active status
 29 member of the State Bar of Georgia for at least ten years and shall be a registered voter
 30 of this state, appointed by the President of the Senate from a list of at least ten nominees
 31 from the board of governors of the State Bar of Georgia; provided, however, that if a
 32 nominee is not selected from such list, the board of governors shall submit another slate
 33 of ten nominees;

34 (3) One member of the State Bar of Georgia who shall have been an active status
 35 member of the State Bar of Georgia for at least ten years and shall be a registered voter
 36 of this state, appointed by the Speaker of the House of Representatives from a list of at
 37 least ten nominees from the board of governors of the State Bar of Georgia; provided,
 38 however, that if a nominee is not selected from such list, the board of governors shall
 39 submit another slate of ten nominees;

40 (4) One citizen member, who shall be a registered voter of this state but shall not be a
 41 member of the State Bar of Georgia, appointed by the Speaker of the House of
 42 Representatives;

43 (5) One citizen member, who shall be a registered voter of this state but shall not be a
 44 member of the State Bar of Georgia, appointed by the President of the Senate; and

45 (6) One member of the State Bar of Georgia, who shall have been an active status
 46 member of the State Bar of Georgia for at least ten years and shall be a registered voter
 47 of this state, appointed by the Governor to serve as chairperson of the commission.

48 ~~(d) From July 1, 2017, through December 31, 2020, the members of the commission shall~~
 49 ~~be as follows:~~

50 ~~(1) Two judges of any court of record, appointed by the Supreme Court;~~

51 ~~(2) One member of the State Bar of Georgia who shall have been an active status~~
 52 ~~member of the State Bar of Georgia for at least ten years and shall be a registered voter~~
 53 ~~of this state, appointed by the President of the Senate from a list of at least ten nominees~~
 54 ~~from the board of governors of the State Bar of Georgia; provided, however, that if a~~
 55 ~~nominee is not selected from such list, the board of governors shall submit another slate~~
 56 ~~of ten nominees;~~

57 ~~(3) One member of the State Bar of Georgia who shall have been an active status~~
 58 ~~member of the State Bar of Georgia for at least ten years and shall be a registered voter~~
 59 ~~of this state, appointed by the Speaker of the House of Representatives from a list of at~~
 60 ~~least ten nominees from the board of governors of the State Bar of Georgia; provided;~~

61 however, that if a nominee is not selected from such list, the board of governors shall
 62 submit another slate of ten nominees;

63 ~~(4) One citizen member, who shall be a registered voter of this state but shall not be a~~
 64 ~~member of the State Bar of Georgia, appointed by the Speaker of the House of~~
 65 ~~Representatives;~~

66 ~~(5) One citizen member, who shall be a registered voter of this state but shall not be a~~
 67 ~~member of the State Bar of Georgia, appointed by the President of the Senate; and~~

68 ~~(6) One member of the State Bar of Georgia, who shall have been an active status~~
 69 ~~member of the State Bar of Georgia for at least ten years and shall be a registered voter~~
 70 ~~of this state, appointed by the Governor to serve as chairperson of the commission.~~

71 ~~(e) On and after January 1, 2021, the members of the commission shall serve for a term~~
 72 ~~of three years and until their successors are appointed and shall be as follows:~~

73 ~~(1) Two judges of any court of record, appointed by the Supreme Court;~~

74 ~~(2) One member of the State Bar of Georgia who shall have been an active status~~
 75 ~~member of the State Bar of Georgia for at least ten years and shall be a registered voter~~
 76 ~~of this state, appointed by the President of the Senate from a list of at least ten nominees~~
 77 ~~from the board of governors of the State Bar of Georgia; provided, however, that if a~~
 78 ~~nominee is not selected from such list, the board of governors shall submit another slate~~
 79 ~~of ten nominees;~~

80 ~~(3) One member of the State Bar of Georgia who shall have been an active status~~
 81 ~~member of the State Bar of Georgia for at least ten years and shall be a registered voter~~
 82 ~~of this state, appointed by the Speaker of the House of Representatives from a list of at~~
 83 ~~least ten nominees from the board of governors of the State Bar of Georgia; provided,~~
 84 ~~however, that if a nominee is not selected from such list, the board of governors shall~~
 85 ~~submit another slate of ten nominees;~~

86 ~~(4) One citizen member, who shall be a registered voter of this state but shall not be a~~
 87 ~~member of the State Bar of Georgia, appointed by the Speaker of the House of~~
 88 ~~Representatives;~~

89 ~~(5) One citizen member, who shall be a registered voter of this state but shall not be a~~
 90 ~~member of the State Bar of Georgia, appointed by the President of the Senate; and~~

91 ~~(6) One member of the State Bar of Georgia, who shall have been an active status~~
 92 ~~member of the State Bar of Georgia for at least ten years and shall be a registered voter~~
 93 ~~of this state, appointed by the Governor to serve as chairperson of the commission.~~

94 (d) Effective July 1, 2017, the commission shall be reconstituted. The members serving
 95 on the commission immediately prior to July 1, 2017, shall cease to serve on that date, but
 96 such prior members shall be eligible for reappointment to succeed themselves or to fill
 97 another position on the commission as further set forth in subsection (f) of this Code

98 section. The powers, functions, and duties of the former commission with regard to the
 99 investigation, discipline, removal, and involuntary retirement of judges are transferred to
 100 the commission created effective July 1, 2017; provided, however, that the formal advisory
 101 opinions, pending and former complaints and disciplinary actions, records, orders,
 102 contracts, agreements with judges, and rules of the former commission shall be retained by
 103 the commission created effective July 1, 2017. Appropriations to the former commission
 104 for functions transferred to the commission created effective July 1, 2017, shall be
 105 transferred to the commission created effective July 1, 2017, as provided for in Code
 106 Section 45-12-90. Personnel previously employed by the former commission and the
 107 equipment and facilities of the former commission for functions transferred to the
 108 commission created effective July 1, 2017, shall likewise be transferred to the commission
 109 created effective July 1, 2017.

110 (e)(1) Effective July 1, 2017, the commission shall be divided into a seven-member
 111 investigative panel and a three-member hearing panel.

112 (2) The investigative panel shall be responsible for:

113 (A) The investigative, prosecutorial, and administrative functions of the commission;

114 (B) Promulgating rules of the commission as set forth in subsection (j) of this Code
 115 section;

116 (C) The selection of an individual to serve as the director of the commission who shall
 117 be an active status member of the State Bar of Georgia and who shall not otherwise
 118 engage in the practice of law or serve in a judicial capacity; and

119 (D) Authorization of employment of such additional staff as the commission deems
 120 necessary to carry out the powers assigned to the commission.

121 (3) The hearing panel shall be responsible for:

122 (A) Adjudicating formal charges filed by the investigative panel;

123 (B) Making recommendations to the Supreme Court as to disciplinary and incapacity
 124 orders; and

125 (C) Issuing formal advisory opinions on its own initiative or on the recommendation
 126 of the investigative panel, subject to review by the Supreme Court, regarding the
 127 Georgia Code of Judicial Conduct.

128 (f)(1) As used in this subsection, the term:

129 (A) 'Attorney' means a lawyer who has been an active status member of the State Bar
 130 of Georgia for at least ten years and is a registered voter in this state.

131 (B) 'Citizen' means an individual who is neither an attorney nor a judge and who is a
 132 registered voter in this state.

133 (C) 'Judge' means an elected or appointed public official who presides over a court of
 134 record.

135 (2) The State Bar of Georgia may recommend to the respective appointing authorities a
136 list of the names of individuals for consideration to serve as attorney commission
137 members.

138 (3)(A) The seven members of the commission's investigative panel shall be appointed
139 as follows:

140 (i) One attorney member shall be appointed by the Governor and shall serve a term
141 of four years; provided, however, that the initial appointment shall be for one year,
142 and thereafter, successors to such member shall serve terms of four years;

143 (ii) Two judge members shall be appointed by the Supreme Court and each shall
144 serve terms of four years; provided, however, that the initial appointments shall be for
145 two and four years, respectively, as designated by the Supreme Court for each
146 appointment, and thereafter, successors to such members shall serve terms of four
147 years;

148 (iii) Two members, consisting of one attorney and one citizen, shall be appointed by
149 the President of the Senate and each shall serve terms of four years; provided,
150 however, that the initial appointment of the attorney member shall be for four years
151 and the initial appointment of the citizen member shall be for one year, and thereafter,
152 successors to such members shall serve terms of four years; and

153 (iv) Two members, consisting of one attorney and one citizen, shall be appointed by
154 the Speaker of the House of Representatives and each shall serve terms of four years;
155 provided, however, that the initial appointment of the attorney member shall be for
156 three years and the initial appointment of the citizen member shall be for two years,
157 and thereafter, successors to such members shall serve terms of four years.

158 (B) The investigative panel members shall annually elect a chairperson and vice
159 chairperson for such panel.

160 (4)(A) The three members of the commission's hearing panel shall be appointed as
161 follows:

162 (i) One citizen member shall be appointed by the Governor for a term of four years
163 and his or her successors shall serve terms of four years; and

164 (i) One judge member and one attorney member shall be appointed by the Supreme
165 Court and each shall serve terms of four years; provided, however, that the initial
166 appointment of the judge member shall be for three years and the initial appointment
167 of the attorney member shall be for two years, and thereafter, successors to such
168 members shall serve terms of four years.

169 (B) The judge member shall serve as the presiding officer of such panel.

170 (5) All members' initial terms shall begin on July 1, 2017, and their successors' terms
171 shall begin on July 1 following their appointment.

172 (6) A commission member shall be eligible to serve so long as he or she retains his or
173 her status as an attorney, citizen, or judge, but a vacancy shall be created by operation of
174 law when he or she no longer has the designation for which he or she was appointed.
175 Any vacancy for a member shall be filled by the appointing authority, and such appointee
176 shall serve the balance of the vacating member's unexpired term; provided, however, that
177 if the appointing authority fails to fill a vacancy within 60 days of being notified of such
178 vacancy by the commission, the Governor shall appoint a replacement member from the
179 same category of member. Any member of the commission may serve two full terms.
180 Any member appointed pursuant to subsection (c) of this Code section, for an initial term
181 as provided by this subsection, or to fill a vacancy may serve an additional two full terms.
182 (f)(g)(1) Any list of nominees appointees required by this Code section shall be
183 submitted to the Senate no later than the third Monday in January. Any member
184 appointed to the commission shall serve until the Senate confirms such nominee
185 appointee, and if an individual's name is not submitted by such deadline, he or she shall
186 not be eligible for appointment confirmation.
187 (2) If an appointee is not confirmed by the Senate, the appointing authority shall
188 promptly submit another appointee's name, notwithstanding the deadline expressed in
189 paragraph (1) of this subsection.
190 (3) If the Senate is not in session at the time an appointee's term begins or a vacancy is
191 created, an appointment shall be effective until a successor is appointed and confirmed
192 at the next regular session.
193 (h) Members and staff of the hearing panel shall not engage in any ex parte
194 communications regarding a disciplinary or incapacity matter of a judge.
195 (i)(1) Each member of the commission shall be entitled to vote on any matter coming
196 before his or her respective panel unless otherwise provided by rules adopted by the
197 commission concerning recusal. The chairperson of the investigative panel and the
198 presiding officer of the hearing panel shall retain a vote on all matters except those in
199 which such chairperson or presiding officer has been recused. No commission member
200 present at a panel meeting shall abstain from voting unless he or she is recused. The rules
201 of the commission shall establish grounds for recusal and the process for allowing a
202 temporary replacement of a commission member in such circumstance.
203 (2)(A) As used in this paragraph, the term 'for cause' shall include indictment for or
204 conviction of a felony or any offense involving moral turpitude; misconduct,
205 malpractice, malfeasance, misfeasance, nonfeasance, or incapacity; failure to attend
206 three or more panel meetings or hearings in a one-year period without good and
207 sufficient reason; or abstaining from voting, unless recused.

208 (B) The rules of the commission shall establish the procedure to remove a commission
209 member from the commission. Removal of a panel member for cause shall be by a
210 unanimous vote of all of the officials appointing the particular panel.

211 (3) A quorum of the investigative panel shall require at least four members to be present
212 and shall consist of at least one judge, one attorney, and one citizen. A quorum of the
213 hearing panel shall require all members to be present. A decision by a panel shall be by
214 majority vote of the members present except for minor procedural or administrative
215 matters assigned to the director, chairperson, or presiding officer, as applicable, for a
216 decision as provided by the rules of the commission.

217 (4)(A) Members of the commission shall serve without compensation but shall receive
218 the same daily expense allowance as members of the General Assembly receive, as set
219 forth in Code Section 28-1-8, for each day such member is in physical attendance at a
220 panel meeting or hearing, plus either reimbursement for actual transportation costs
221 while traveling by public transportation or the same mileage allowance for use of a
222 personal motor vehicle in connection with such attendance as members of the General
223 Assembly receive.

224 (B) Notwithstanding subparagraph (A) of this paragraph, no member shall receive such
225 expense allowance or travel reimbursement if he or she is entitled to receive an expense
226 allowance, travel reimbursement, or salary for performance of duties as a state
227 employee.

228 (C) Expense allowances and travel reimbursement shall be paid from moneys
229 appropriated or otherwise available to the commission.

230 ~~(g)(j) The Judicial Qualifications Commission may adopt procedures for its own~~
231 ~~investigative panel shall promulgate rules for the commission's governance which comport~~
232 ~~with due process and are not otherwise provided by the Georgia Constitution or this Code~~
233 ~~section; provided, however, that such procedures shall not allow an individual member to~~
234 ~~initiate an investigation without presenting such proposal to the other members of the~~
235 ~~commission at a commission meeting rules shall be reviewed and adopted by the Supreme~~
236 ~~Court. Such rules shall allow for a full investigation of a judge only upon the approval of~~
237 ~~the investigative panel, not upon the request of an individual panel member or the director.~~
238 ~~When a commission member receives information relating to the conduct of a judge, such~~
239 ~~member shall provide such information to the commission's director for appropriate action.~~

240 ~~(h) Members of the commission shall be subject to removal from the commission by an~~
241 ~~affirmative vote of six members of the commission, with the member who is subject to~~
242 ~~removal being disqualified from any such vote.~~

243 ~~(i) No person shall serve more than two consecutive terms as a member of the~~
 244 ~~commission; provided, however, that any person appointed pursuant to subsection (c) of~~
 245 ~~this Code section may serve for three consecutive terms as a member of the commission.~~

246 ~~(j) Notwithstanding Chapter 14 of Title 50, unless otherwise waived by the judge involved,~~
 247 ~~all papers filed with and proceedings before the commission, including any investigation~~
 248 ~~that the commission may undertake, shall be confidential, and no person shall disclose~~
 249 ~~information obtained from commission proceedings or papers filed with or by the~~
 250 ~~commission, except as provided in this Code section. Such papers shall not be subject to~~
 251 ~~disclosure under Article 4 of Chapter 18 of Title 50.~~

252 (k)(1) All information regarding a disciplinary or incapacity matter of a judge shall be
 253 kept confidential by the investigative panel and commission staff before formal charges
 254 are filed; provided, however, that if prior to filing formal charges such judge and
 255 investigative panel agree to a satisfactory disposition of the matter, a report of such
 256 disposition shall be filed in the Supreme Court.

257 (2) After the filing and service of formal charges:

258 (A) With respect to an incapacity matter of a judge, all pleadings, information,
 259 hearings, and proceedings shall remain confidential; and

260 (B) With respect to a disciplinary matter of a judge, all pleadings and information shall
 261 be subject to disclosure to the public and all hearings and proceedings shall be open and
 262 available to the public.

263 (3) With respect to administrative and other matters, all records and information shall be
 264 subject to disclosure to the public and all meetings, or portions thereof, shall be open and
 265 available to the public except to the extent such records, information, and meetings
 266 would:

267 (A) Disclose disciplinary matters of a judge protected in paragraph (1) of this
 268 subsection;

269 (B) Disclose incapacity matters of a judge protected in paragraph (1) or subparagraph
 270 (A) of paragraph (2) of this subsection;

271 (C) Be considered a matter subject to executive session, if the commission were
 272 considered to be an agency under Chapter 14 of Title 50; or

273 (D) Not be required under Code Section 50-18-72, if the commission were considered
 274 to be an agency.

275 (4) The work product of the commission and its staff and the deliberations of the
 276 commission shall remain confidential.

277 (l) Notwithstanding subsection (k) of this Code section, information regarding a
 278 disciplinary or incapacity matter of a judge may be disclosed when:

279 (1) The privilege of confidentiality has been waived by the individual who was the
 280 subject of the commission's investigation; or

281 (2) The commission's rules provide for disclosure:

282 (A) In the interest of justice and to protect the public;

283 (B) When an emergency situation exists; or

284 (C) When a judge is under consideration for another state or federal position.

285 ~~(k)(m)~~ Information submitted to the commission or its staff, and testimony given in any
 286 proceeding before the commission or one of its panels, shall be absolutely privileged, and
 287 no civil action predicated upon such information or testimony shall be instituted against
 288 any complainant, witness, or his or her counsel.

289 ~~(l) If, after an investigation is completed, the commission concludes that a letter of caution~~
 290 ~~is appropriate, it shall issue a letter of caution to the judge in lieu of any further proceeding~~
 291 ~~in the matter. The issuance of a letter of caution shall be confidential in accordance with~~
 292 ~~subsection (j) of this Code section.~~

293 ~~(m) If, after an investigation is completed, the commission concludes that disciplinary~~
 294 ~~proceedings should be instituted, the notice and statement of charges filed by the~~
 295 ~~commission, along with the answer and all other pleadings, shall remain confidential in~~
 296 ~~accordance with subsection (j) of this Code section. Disciplinary hearings ordered by the~~
 297 ~~commission shall be confidential, and recommendations of the commission to the Supreme~~
 298 ~~Court, along with the record filed in support of such recommendations, shall be~~
 299 ~~confidential in accordance with subsection (j) of this Code section. Testimony and other~~
 300 ~~evidence presented to the commission shall be privileged in any action for defamation. At~~
 301 ~~least four members of the commission shall concur in any recommendation to issue a~~
 302 ~~public reprimand against or to censure, suspend, retire, or remove any judge.~~

303 (n) A respondent who is recommended for public reprimand, censure, suspension,
 304 retirement, or removal shall be entitled to a copy of the proposed record to be filed with the
 305 Supreme Court, and if the respondent has objections to it, to have the record settled by the
 306 commission's chairperson hearing panel's presiding officer. The respondent shall also be
 307 entitled to present a brief and to argue the respondent's case, in person and through counsel,
 308 to the Supreme Court. ~~A majority of the members of the Supreme Court voting shall~~
 309 ~~concur in any order of public reprimand, censure, suspension, retirement, or removal. The~~
 310 ~~Supreme Court may approve the recommendation, remand for further proceedings, or reject~~
 311 ~~the recommendation. A member of the commission who is a judge shall be disqualified~~
 312 ~~from acting in any case in which he or she is a respondent.~~

313 ~~(n) Upon issuance of a public reprimand, censure, suspension, retirement, or removal by~~
 314 ~~the Supreme Court, the notice and statement of charges filed by the commission along with~~
 315 ~~the answer and all other pleadings, including the recommendation of the commission to the~~

316 ~~Supreme Court and the record filed in support of such recommendation, shall no longer be~~
317 ~~confidential.~~
318 (o) When a judge knows that he or she is under investigation by the commission and a
319 commission member is representing a party before such judge, the judge shall be
320 disqualified from presiding over such matter. The findings and records of the commission
321 during an open meeting shall not be exempt from disclosure under Article 4 of Chapter 18
322 of Title 50."

323 **SECTION 3.**

324 This Act shall become effective upon its approval by the Governor or upon its becoming law
325 without such approval.

326 **SECTION 4.**

327 All laws and parts of laws in conflict with this Act are repealed.