

The House Committee on Judiciary offers the following substitute to HB 126:

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 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 two years,  
 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 one year, 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, including with  
 195 members and staff of the investigative panel.

196 (i)(1) Each member of the commission shall be entitled to vote on any matter coming  
 197 before his or her respective panel unless otherwise provided by rules adopted by the  
 198 commission concerning recusal. The chairperson of the investigative panel and the  
 199 presiding officer of the hearing panel shall retain a vote on all matters except those in  
 200 which such chairperson or presiding officer has been recused. No commission member  
 201 present at a panel meeting shall abstain from voting unless he or she is recused. The rules  
 202 of the commission shall establish grounds for recusal and the process for allowing a  
 203 temporary replacement of a commission member in such circumstance.

204 (2)(A) As used in this paragraph, the term 'for cause' shall include indictment for or  
 205 conviction of a felony or any offense involving moral turpitude; misconduct,  
 206 malpractice, malfeasance, misfeasance, nonfeasance, or incapacity; failure to attend  
 207 three or more panel meetings or hearings in a one-year period without good and  
 208 sufficient reason; or abstaining from voting, unless recused.

209 (B) Removal of a panel member for cause shall be by a unanimous vote of all of the  
 210 officials having the authority to appoint members to that 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 effective only upon review and  
 236 adoption by the Supreme Court. Such rules shall allow for a full investigation of a judge  
 237 only upon the approval of the investigative panel, not upon the request of an individual  
 238 panel member or the director. When a commission member receives information relating  
 239 to the conduct of a judge, such member shall provide such information to the commission's  
 240 director for appropriate action.

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

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

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

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

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

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

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

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

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

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

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

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

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

278 (l) Notwithstanding subsection (k) of this Code section, information regarding a  
 279 disciplinary or incapacity matter of a judge may be disclosed or the confidentiality of such  
 280 information may be removed, when:



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

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

284 (A) In the interest of justice and to protect the public;  
 285 (B) When an emergency situation exists; or  
 286 (C) When a judge is under consideration for another state or federal position.

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

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

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

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

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

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

325 **SECTION 3.**

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