

SENATE 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 engage in the
 118 practice of law, other than to represent the commission, or serve in a judicial capacity;
 119 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

173 (6) A commission member shall be eligible to serve so long as he or she retains his or
 174 her status as an attorney, citizen, or judge, but a vacancy shall be created by operation of
 175 law when he or she no longer has the designation for which he or she was appointed.

176 Any vacancy for a member shall be filled by the appointing authority, and such appointee
 177 shall serve the balance of the vacating member's unexpired term; provided, however, that
 178 if the appointing authority fails to fill a vacancy within 60 days of being notified of such
 179 vacancy by the commission, the Governor shall appoint a replacement member from the
 180 same category of member. Any member of the commission may serve two full terms.

181 Any member appointed pursuant to subsection (c) of this Code section, for an initial term
 182 as provided by this subsection, or to fill a vacancy may serve an additional two full terms.

183 (f)(g)(1) The names of the appointees ~~Any list of nominees~~ required by this Code section
 184 shall be submitted by the appointing authorities to the Senate no later than the third
 185 Monday in January. Any member appointed to the commission shall serve until the
 186 Senate confirms such ~~nominee~~ appointee, and if an individual's name is not submitted by
 187 such deadline, he or she shall not be eligible for ~~appointment~~ confirmation.

188 (2) If an appointee is not confirmed by the Senate, the appointing authority shall
 189 promptly submit another appointee's name, notwithstanding the deadline expressed in
 190 paragraph (1) of this subsection.

191 (3) If the Senate is not in session at the time an appointee's term begins or a vacancy is
 192 created, an appointee for such term or to fill such vacancy shall be effective until his or
 193 her name can be submitted to the Senate and his or her appointment can be confirmed at
 194 the next regular session.

195 (h) Members and staff of the hearing panel shall not engage in any ex parte
 196 communications regarding a disciplinary or incapacity matter of a judge, including with
 197 members and staff of the investigative panel.

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

206 (2)(A) As used in this paragraph, the term 'for cause' shall include indictment for or
 207 conviction of a felony or any offense involving moral turpitude; misconduct,

208 malpractice, malfeasance, misfeasance, nonfeasance, or incapacity; failure to attend
 209 three or more panel meetings or hearings in a one-year period without good and
 210 sufficient reason; or abstaining from voting, unless recused.

211 (B) Removal of a panel member for cause shall be by a unanimous vote of all of the
 212 appointing authorities for the members of that particular panel.

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

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

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

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

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

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

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

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

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

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

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

264 (B) With respect to a disciplinary matter of a judge, all pleadings and information shall
 265 be subject to disclosure to the public and all hearings and proceedings shall be open and
 266 available to the public except to the extent that such pleadings and information or
 267 hearings and proceedings could be properly sealed or closed by a court as provided by
 268 law.

269 (3) With respect to administrative and other matters, all records and information shall be
 270 subject to disclosure to the public and all meetings, or portions thereof, shall be open and
 271 available to the public except to the extent such records, information, and meetings
 272 would:

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

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

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

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

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

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

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

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

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

290 (B) When an emergency situation exists; or

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

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

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

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

310 (n) A respondent who is recommended for public reprimand, censure, limitation on the
 311 performance of judicial duties, suspension, retirement, or removal shall be entitled to a
 312 copy of the proposed record to be filed with the Supreme Court, and if the respondent has
 313 objections to it, to have the record settled by the hearing panel's presiding officer. The
 314 hearing panel's recommendation as to an order in a disciplinary or incapacity matter shall
 315 be reviewed by the Supreme Court in accordance with its rules and the rules of the

316 ~~commission. commission's chairperson. The respondent shall also be entitled to present~~
 317 ~~a brief and to argue the respondent's case, in person and through counsel, to the Supreme~~
 318 ~~Court. A majority of the members of the Supreme Court voting shall concur in any order~~
 319 ~~of public reprimand, censure, suspension, retirement, or removal. The Supreme Court may~~
 320 ~~approve the recommendation, remand for further proceedings, or reject the~~
 321 ~~recommendation. A member of the commission who is a judge shall be disqualified from~~
 322 ~~acting in any case in which he or she is a respondent.~~

323 ~~(n) Upon issuance of a public reprimand, censure, suspension, retirement, or removal by~~
 324 ~~the Supreme Court, the notice and statement of charges filed by the commission along with~~
 325 ~~the answer and all other pleadings, including the recommendation of the commission to the~~
 326 ~~Supreme Court and the record filed in support of such recommendation, shall no longer be~~
 327 ~~confidential.~~

328 ~~(o) When a judge knows that he or she is under investigation by the commission and a~~
 329 ~~commission member is representing a party before such judge, the judge shall be~~
 330 ~~disqualified from presiding over such matter. The findings and records of the commission~~
 331 ~~during an open meeting shall not be exempt from disclosure under Article 4 of Chapter 18~~
 332 ~~of Title 50."~~

333 **PART II**

334 **SECTION 2-1.**

335 Code Section 15-9-2.1 of the Official Code of Georgia Annotated, relating to appointment,
 336 compensation, term, authority, qualifications, training, and other limitations of associate
 337 probate court judges, is amended by revising paragraph (1) of subsection (e) as follows:

338 "(1) It shall be unlawful for any full-time associate judge of the probate court to engage
 339 in any practice of law outside his or her role as an associate judge of the probate court;
 340 provided, however, that such prohibition shall not apply when he or she is serving as a
 341 judge advocate general or in any other military role in a reserve component of the United
 342 States Army, United States Navy, United States Marine Corps, United States Coast
 343 Guard, United States Air Force, United States National Guard, Georgia National Guard,
 344 Georgia Air National Guard, Georgia Naval Militia, or the State Defense Force. It shall
 345 be unlawful for any part-time associate judge of the probate court to engage directly or
 346 indirectly in the practice of law in his or her own name or in the name of another as a
 347 partner in any manner in any case, proceeding, or matter of any kind in his or her own
 348 court or in any other court in any case, proceeding, or any other matters of which his or
 349 her own court has pending jurisdiction or has jurisdiction. It shall be unlawful for any
 350 associate judge of the probate court, full-time or part-time, to give advice or counsel to

351 any person on any matter of any kind whatsoever that has arisen directly or indirectly in
352 his or her own court, except such advice or counsel as he or she is called upon to give
353 while performing the duties of an associate judge of the probate court.”

354

PART III

355

SECTION 3-1.

356

SECTION 3.

357

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