



SENATE JOINT RESOLUTION 136

PROPOSED CONSTITUTIONAL AMENDMENT

Note: The ballot title and explanatory statement were written by the Attorney General as required by law. The complete text of Senate Joint Resolution 136 begins on page 18.

Vote cast by the 1986 Legislature on final passage:
HOUSE: Yeas, 97; Nays, 0; Absent or not voting, 1.
SENATE: Yeas, 45; Nays, 0; Absent or not voting, 4.

Official Ballot Title:

Shall the Constitution be amended to increase authority and membership of the commission reviewing judicial conduct and require public proceedings?

The law as it now exists:

In 1980, the state Constitution was amended to empower the Supreme Court to censure, suspend or remove a judge or justice from office for discipline or disability reasons. That constitutional amendment created a Judicial Qualifications Commission consisting of three judges, two

attorneys and two non-attorneys. That commission considers complaints and, after notice and hearing, makes a recommendation which precedes any action by the State Supreme Court. A judge whose conduct is being reviewed can continue to hold office and function as a judge until action is taken by the State Supreme Court.

A statute adopted in 1981 exempts the Judicial Qualifications Commission from provisions of the Public Disclosure Act and directs the commission to establish rules for the confidentiality of its proceedings. Those rules provide for confidentiality of the commission's proceeding with some exceptions where public interest in maintaining confidence in the judiciary and the integrity of the administration of justice so require.

The effect of SJR 136, if approved into law:

The Judicial Qualifications Commission would be renamed the "Commission on Judicial Conduct." The commis-

sion would be increased to nine members by adding two people who are not attorneys.

The initial proceeding of the commission to determine whether sufficient reason exists to conduct a hearing is to be confidential unless confidentiality is waived by the judge who is the subject of the accusation. All subsequent hearings, however, are required to be conducted open to members of the public.

This constitutional amendment would also authorize the commission, if it recommends that a judge be removed from office, to immediately suspend the judge, with salary, until a final determination is made by the Supreme Court. The Supreme Court is directed by the Constitution to specify the effect upon salary when disciplinary action, other than removal, is taken.

Statement for

Public confidence in the integrity of judges is essential for the judicial system to function. The changes provided by SJR 136 will increase confidence in the judiciary by bringing about fairer, and more open, disciplinary proceedings for judges.

A NEW NAME—TWO MORE PUBLIC MEMBERS ON THE COMMISSION

The Judicial Qualifications Commission will be more accurately named the Commission on Judicial Conduct. By expanding the commission to include two additional non-lawyer public members, a broader, more representative commission to address judicial conduct will be created.

OPEN FACT-FINDING HEARINGS

Requiring fact-finding hearings to be open to the public is an important change. Currently, hearings are open only if the commission decides this would be in the public interest, and to date, there has been just one public hearing in the commission's five-year history. Initial proceedings to determine whether there is any reason to hold a fact-finding hearing would still be confidential in order to protect both complainants and judges, although a judge could waive confidentiality of the fact that an investigation is taking place.

IMMEDIATE SUSPENSION OF DISCIPLINED JUDGES

Finally, immediate suspension of judges the commission recommends be removed from office is appropriate to ensure the integrity of the judicial process as well as fairness to individual plaintiffs and defendants.

Adoption of SJR 136 will increase the effectiveness of procedures to hear complaints against judges. By doing so, it will increase the integrity of the judicial system as a whole.

Rebuttal of Statement against

SJR 136 improves procedures to discipline judges.

- SJR 136 makes it clear when disciplinary proceedings can be held in public. Whether the media chooses to publicize those proceedings misses the point.

- Adding two non-lawyers represents an insignificant increase in the budget—a small price for a more representative commission.

- Statements the amendment is unclear are attempts to find problems where none exist.

SJR 136 promotes greater public confidence in the judiciary. Vote **yes** on 136!

For additional information, call (206) 938-0134.

Voters Pamphlet Statement Prepared by:

PHIL TALMADGE, State Senator; JACK METCALF, State Senator; PAT SCOTT, State Representative.

Statement against

Vote no — This resolution is *not necessary, not clear, too costly.*

NOT NECESSARY

The present commission functions smoothly — is well balanced — does the job for which it was created. Adding two members also adds two alternates. Administratively the problems multiply geometrically.

NOT CLEAR

When can a judge "go public" with complaints? What are "initial proceedings"? Who decides this stage? The language is too indefinite to be in *our* Constitution.

TOO COSTLY

Lay members get \$100 per day, plus transportation and subsistence. Will the Legislature fund the additional cost? It cut the commission budget request 50% during a 1985 closed committee meeting without seeking comment. It did reinstate approximately two-thirds of the money not spent by the commission during the previous biennium.

PUBLIC INFORMATION

The media only publicizes the complaints it chooses and decides the public's "right to know". These Constitutional changes do not change the media's right of selectivity. The citizens of this state gain nothing by this resolution.

NAME CHANGE

The only valid addition is the name change to reflect more accurately the commission's function. This is not justifi-

cation for fostering these negative provisions on Washington citizens.

In five years of existence the commission has attained national recognition. The commission's rules of procedure have been requested from other jurisdictions.

Rebuttal of Statement for

If it's not broken, don't fix it: The present commission functions economically, efficiently and effectively. A larger commission would be more expensive and would take longer to do its job. The size should not be changed.

The judge being investigated should not control when the *investigation* becomes public. This could cause problems and delay in the investigation and also create a danger of mistrials and additional cost to parties and the public.

Vote **no**.

Voters Pamphlet Statement Prepared by:

F. LEE CAMPBELL; GRETA BRYAN.

Advisory Committee: CHUCK GITTINGS, Vice-President, Washington State Labor Council AFL-CIO.

by the state treasurer under this section shall be credited to the general fund. The auditor's collection fee shall be deposited in the county current expense fund. A duplicate of the county auditor's transmittal report to the state treasurer shall be forwarded forthwith to the department of revenue.

Any applicant who has paid use tax to a county auditor under this section may apply to the department of revenue for refund thereof if he has reason to believe that such tax was not legally due and owing. No refund shall be allowed unless application therefor is received by the department of revenue within two years after payment of the tax. Upon receipt of an application for refund the department of revenue shall consider the same and issue its order either granting or denying it and if refund is denied the taxpayer shall have the right of appeal as provided in RCW 82.32.170, 82.32.180 and 82.32.190.

The provisions of this section shall be construed as cumulative of other methods prescribed in chapters 82.04 to 82.32 RCW, inclusive, for the collection of the tax imposed by this chapter. The department of revenue shall have power to promulgate such rules and regulations as may be necessary to administer the provisions of this section. Any duties required by this section to be performed by the county auditor may be performed by the director of licensing but no collection fee shall be deductible by said director in remitting use tax revenue to the state treasurer.

NEW SECTION. Sec. 5. A new section is added to chapter 43.99 RCW to read as follows:

(1) Two-thirds of the moneys collected under RCW 82.08.020(2) and 82.12.020(2) shall be deposited in the state game fund.

(2) One-third of the moneys collected under RCW 82.08.020(2) and 82.12.020(2) shall be deposited in the wildlife account hereby created in the state treasury. The wildlife account shall be administered by the interagency committee for outdoor recreation and shall be used for programs and projects related to fish and wildlife conservation and recreation. Moneys in the wildlife account shall be divided as follows:

(a) Not less than forty percent to state agencies, upon application, for eligible programs and projects. "State agencies" include the Washington departments of fisheries, game, natural resources, and ecology, the state parks and recreation commission, and the office of the superintendent of public instruction.

(b) Not less than forty percent to local agencies, upon application, for eligible programs and projects. "Local agencies" means those public bodies defined in RCW 43.99.020(2).

The interagency committee for outdoor recreation shall adopt rules for the distribution of funds from the wildlife account in accordance with the comprehensive plan under subsection (3) of this section. Multiple use projects and cooperative programs between agencies are encouraged as long as they are consistent with the comprehensive plan.

(3) All funds shall be allocated according to a new comprehensive fish and wildlife management plan. The plan shall be developed by the department of game, in consultation with the public and agencies eligible to receive a portion of these funds. Habitat protection and enhancement shall be the primary consideration in development of the comprehensive plan. Other considerations shall include public access, wildlife enforcement, conservation education, population enhancement, and research. The purpose of the plan shall be to establish long-range goals; modern, integrated data collection and management systems; and methods for determining and managing trends for all elements of the resource. The planning and monitoring shall be ongoing and continuous efforts.

Sec. 6. Section 84, chapter 287, Laws of 1984 as amended by section 1, chapter 77, Laws of 1985 and RCW 43.99.110 are each amended to read as follows:

There is created the interagency committee for outdoor recreation consisting of the commissioner of public lands, the director of parks and recreation, the director of game, the director of fisheries, or their designees, and, by appointment of the governor with the advice and consent of the senate, five members from the public at large who have a demonstrated interest in and a general knowledge of outdoor recreation and wildlife in the state. The terms of members appointed from the public at large shall commence on January 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies which shall be for the remainder of the unexpired term; provided the first such members shall be appointed for terms as follows: One member for one year, two members for two years, and two members for three years. The governor shall appoint one of the members from the public at large to serve as chairman of the committee for the duration of the member's term. Members employed by the state shall serve without additional pay and participation in the work of the committee shall be deemed performance of their employment. Members from the public at large shall be compensated in accordance with RCW 43.03.240 and shall be entitled to reimbursement individually for travel expenses incurred in performance of their duties as members of the committee in accordance with RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 7. This act shall take effect January 1, 1987.



COMPLETE TEXT OF Senate Joint Resolution 136

BE IT RESOLVED, BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF WASHINGTON, IN LEGISLATIVE SESSION ASSEMBLED:

THAT, At the next general election to be held in this state there shall be submitted to the qualified voters of the state for their approval and ratification, or rejection, an amendment to Article IV, section 31 of the Constitution of the state of Washington to read as follows:

Article IV, section 31. There shall be a ((*judicial qualifications*)) commission on judicial conduct consisting of a judge selected by and from the court of appeals judges, a judge selected by and from the superior court judges, a judge selected by and from the district court judges, two persons admitted to the practice of law in this state selected by the state bar association, and ((*two*)) four persons who are not attorneys appointed by the governor and confirmed by the senate.

The supreme court may censure, suspend, or remove a judge or justice for violating a rule of judicial conduct and may retire a judge or justice for disability which is permanent or is likely to become permanent and which seriously interferes with the performance of judicial duties. The office of a judge or justice retired or removed by the supreme court becomes vacant, and that person is ineligible for judicial office until eligibility is reinstated by the supreme court. The salary of a removed judge or justice shall cease.

The supreme court shall specify the effect upon salary when disciplinary action other than removal is taken. The supreme court may not discipline or retire a judge or justice until the ((*judicial qualifications*)) commission on judicial conduct recommends after notice and hearing that action be taken and the supreme court conducts a hearing, after notice, to review commission proceedings and findings against a judge or justice.

Whenever the commission receives a complaint against a judge or justice, it shall first conduct proceedings for the purpose of determining whether sufficient reason exists for conducting a hearing or hearings to deal with the accusations. These initial proceedings shall be confidential, unless confidentiality is waived by the judge or justice, but all subsequent hearings conducted by the commission shall be open to members of the public.

Whenever the commission adopts a recommendation that a judge or justice be removed, the judge or justice shall be suspended immediately, with salary, from his or her judicial position until a final determination is made by the supreme court.

The legislature shall provide for commissioners' terms of office and compensation. The commission shall establish rules of procedure for commission proceedings including due process and confidentiality of proceedings.

BE IT FURTHER RESOLVED, That the secretary of state shall cause notice of the foregoing constitutional amendment to be published at least four times during the four weeks next preceding the election in every legal newspaper in the state.



COMPLETE TEXT OF Senate Joint Resolution 138

BE IT RESOLVED, BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF WASHINGTON, IN LEGISLATIVE SESSION ASSEMBLED:

THAT, At the next general election to be held in this state there shall be submitted to the qualified voters of the state for their approval and ratification, or rejection, an amendment to Article II, section 15, of the Constitution of the state of Washington to read as follows:

Article II, section 15. ((*Such*)) (1) Vacancies ((*as may*)) that occur in either house of the state legislature or in any partisan county elective office shall be filled by appointment by the ((*board of county commissioners*)) legislative authority of the county in which the vacancy occurs ((: *PROVIDED, That*)). The person appointed to fill the vacancy must be from the same legislative district, county, or county ((*commissioner*)) legislative authority district ((*and the same political party*)) as the legislator or partisan county elective officer whose office has been vacated ((, *and*)). The person appointed shall also be one of three persons ((*who shall be*)) nominated by the county central committee of ((*that*)) the political party((, *and*)) of the partisan officer whose office has been vacated if the nominations are received by the county legislative authority within the time prescribed by statute. In case of a majority of ((*said*)) the members of the county ((*commissioners*)) legislative authority do not agree upon the appointment within ((*sixty days after the vacancy occurs*)) the time prescribed by statute, the governor shall ((*within thirty days thereafter, and*)), from the list of nominees ((*provided for herein*)) submitted to the county legislative authority if the list was

timely received, appoint a person who shall be from the same legislative district, county, or county ((*commissioner*)) legislative authority district ((*and of the same political party*)) as the legislator or partisan county elective officer whose office has been vacated((, *and the person so appointed shall hold office until his successor is elected at the next general election, and shall have qualified: PRO-VIDED, That in case of a vacancy occurring in the office of joint senator, or joint representative, the vacancy shall be filled from a list of three nominees selected by the state central committee, by appointment by the joint action of the boards of county commissioners of the counties composing the joint senatorial or joint representative district, the person appointed to fill the vacancy must be from the same legislative district and of the same political party as the legislator whose office has been vacated, and in case a majority of said county commissioners do not agree upon the appointment within sixty days after the vacancy occurs, the governor shall within thirty days thereafter, and from the list of nominees provided for herein, appoint a person who shall be from the same legislative district and of the same political party as the legislator whose office has been vacated*)).

(2) If the majority of the positions of a county legislative authority are vacant, the governor shall appoint to the legislative authority that number of persons necessary to establish a majority of filled positions. A person appointed to fill such a vacancy shall be from the same county legislative authority district as the officer whose office has been vacated. If the positions are partisan elective offices, a person appointed to fill such a vacancy shall also be one of three persons nominated by the county central committee of the same political party as the officer whose office has been vacated if the nominations are received by the governor within the time prescribed by statute.

(3) In case of a vacancy occurring in a nonpartisan county elective office, other than a judicial office, the county legislative authority shall appoint a person to fill the vacancy from the same county or county legislative authority district as the officer whose office has been vacated. If a majority of the members of the county legislative authority do not agree upon the appointment within the time prescribed by statute, the governor shall appoint a person from the same county or county legislative authority district.

(4) Vacancies that occur in the office of senator or representative of a state legislative district comprising more than one county shall be filled by appointment by the joint action of the legislative authorities of the counties within the district. The person appointed to fill the vacancy shall be from the same legislative district as the legislator whose office has been vacated. The person appointed shall also be one of three persons nominated by the state central committee of the political party of the legislator whose office has been vacated if the nominations are received by the county legislative authorities within the time prescribed by statute. In joint action, the individual vote of each county legislative authority member, not disqualified from voting under subsection (5) of this section, shall collectively amount to the percentage, rounded to the nearest whole number, that the population of the county or portion of the county within the legislative district bears to the population of the entire district. The population shall be determined by the most recent federal census and shall exclude nonresident military personnel. The vacancy shall be filled if one person receives a majority percentage of the votes of the county legislative authorities. If the members of the jointly meeting county legislative authorities do not agree upon an appointment to fill the vacancy within the time prescribed by statute, the governor shall, from the list of nominees submitted to the county legislative authorities if the list was timely