



# SENATE JOINT RESOLUTION 8202

## 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 8202 begins on page 14.

**Vote cast by the 1989 Legislature on final passage:**

HOUSE: Yeas, 93; Nays, 3; Absent or not voting, 2.

SENATE: Yeas, 40; Nays, 3; Absent or not voting, 6.

### Statement for

#### STRENGTHENING THE JUDICIAL CONDUCT COMMISSION WILL RESTORE PUBLIC CONFIDENCE

Allegations of serious misconduct by judges must be handled in as fair and as open a way as possible. The mostly secret handling of such cases has shaken public confidence in judges and in the Commission on Judicial Conduct.

Only by adopting SJR 8202 can we insure public awareness of judicial misconduct when it occurs. Only by adopting this amendment can we restore public confidence that such misconduct will be dealt with appropriately.

The great majority of judges in this state are honorable, competent and hard working. They deserve the respect that this restoration of confidence will promote.

#### SJR 8202 MAKES IMPORTANT IMPROVEMENTS IN THE COMMISSION AND ITS OPERATIONS

The membership of the commission is increased and non-lawyers are given a majority of the membership.

The commission is directed to take a more active investigative role in cases of possible judicial misconduct. The commission is required to hire appropriately trained and experienced investigative personnel.

The commission's disciplinary actions are made open to public scrutiny. Once the commission has determined there is probable cause to believe judicial misconduct has occurred, all subsequent proceedings of the commission must be open to the public. In addition, all of

### Official Ballot Title:

Shall the State Constitution's provision creating the Judicial Conduct Commission be revised to more explicitly describe its process and authority?

### The law as it now exists:

The Judicial Conduct Commission, which consists of nine members, four of whom are non-lawyers, is empowered to consider complaints against judges. However, sanctions against a judge can only be imposed by the State Supreme

the investigative material that led to the finding of probable cause must be made public.

#### CONSTITUTIONAL CHANGE IS NECESSARY

The public cannot be adequately protected by the secret procedures of the past. This constitutional amendment provides a balance between the needs of an independent judiciary and the needs of the public to be protected from judicial misconduct.

Vote *FOR* SJR 8202.

**Voters Pamphlet Statement Prepared by:**

MAX E. BENITZ, State Senator; KENT PULLEN, State Senator;  
MARLIN APPELWICK, State Representative.

Court. The commission first conducts an initial proceeding, which is confidential, to determine whether sufficient reason exists to conduct a hearing. Hearings after the initial hearing are open to members of the public. If the Commission, after a hearing, concludes that a judge should be censured, suspended, removed from office or required to retire, the matter is then referred to the State Supreme Court. If the Commission recommendation is removal, the judge is suspended immediately with salary until a final determination is made by the Supreme Court.

If the Supreme Court removes a judge from office, that person is ineligible to reassume judicial office until eligibility is reinstated by the Supreme Court.

## **The effect of SJR 8202, if approved into law:**

The Judicial Conduct Commission would be increased to eleven members, adding two additional non-lawyers. The Commission, in response to complaints or upon its own motion, is to investigate judicial conduct. An initial proceeding, which is confidential, is to determine whether probable

cause exists to proceed to hearing. The Commission is directed to notify the judge of the existence and the basis for the initial proceeding. If a hearing is then held, the hearing is open to the public and all of the records of the initial proceeding that provided the basis for the Commission's conclusion are to be made public.

If the Commission censures or reprimands a judge, the judge has the right of appeal to the Supreme Court within thirty days. If the Commission recommends suspension or removal, the matter is referred to the State Supreme Court. If the Commission's recommendation is removal, the judge is suspended immediately with salary until a final determination is made by the Supreme Court.

If the Supreme Court removes a judge from office, that person is ineligible to reassume judicial office until eligibility is reinstated by the Supreme Court.

The Commission is authorized to adopt appropriate rules in compliance with the general laws governing state agency adoption of rules, unless to do so would conflict with this constitutional amendment. The Commission is further required to employ one or more investigative officers having appropriate professional training and they are to report directly to the Commission.

## **Statement against**

State law requires that the argument and rebuttal statement against a constitutional amendment be written by one or more members of the state Legislature who voted against that proposed measure on final passage or, in the event that no such member of the Legislature consents to prepare the statement, by any other responsible individual or individuals to be appointed by the Speaker of the House of Representatives, the President of the State Senate, and the Secretary of State. No legislator who voted against Senate Joint Resolution 8202 or other individual opposing the measure consented to write an argument against the measure for publication in this pamphlet.

which the article is used. The moneys collected as a result of the increase specified in this section shall be deposited in the general fund for transfer to the children's initiative fund.

**NEW SECTION.** Sec. 10. IMPLEMENTATION OF INCREASED TAXES. The director of revenue shall immediately take all necessary steps, within the authority granted to the director under RCW 82.01.060, to ensure that any new or increased taxes imposed to carry out the purposes of this act are assessed and collected on the applicable effective date of such tax increases.

**NEW SECTION.** Sec. 11. SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION.** Sec. 12. CONSTRUCTION. The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern.

**NEW SECTION.** Sec. 13. CAPTIONS. As used in this act, captions constitute no part of the law.

**NEW SECTION.** Sec. 14. SHORT TITLE. This act shall be known as the children's initiative act.

**NEW SECTION.** Sec. 15. LEGISLATIVE DIRECTIVE. Sections 1 through 3 and 5 through 7 of this act shall constitute a new chapter in Title 74 RCW.

**NEW SECTION.** Sec. 16. EFFECTIVE DATE. This act shall take effect June 1, 1990.



## COMPLETE TEXT OF Senate Joint Resolution No. 8200

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 I, section -- of the Constitution of the state of Washington to read as follows:

Article I, section --. Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.

Upon notifying the prosecuting attorney, a victim of a crime charged as a felony shall have the right to be informed of and, subject to the discretion of the individual presiding over the trial or court proceedings, attend trial and all other court proceedings the defendant has the right to attend, and to make a statement at sentencing and at any proceeding where the defendant's release is considered, subject to the same rules of procedure which govern the defendant's rights. In the event the victim is deceased, incompetent, a minor, or otherwise unavailable, the prosecuting attorney may identify a representa-

tive to appear to exercise the victim's rights. This provision shall not constitute a basis for error in favor of a defendant in a criminal proceeding nor a basis for providing a victim or the victim's representative with court appointed counsel.

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 No. 8202

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 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 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 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.)~~

(1) There shall be a commission on judicial conduct, existing as an independent agency of the judicial branch, and 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 six persons who are not attorneys appointed by the governor.

(2) Whenever the commission receives a complaint against a judge or justice, or otherwise has reason to believe that a judge or justice should be admonished, reprimanded, censured, suspended, removed, or retired, the commission shall first investigate the complaint or belief and then conduct initial proceedings for the purpose of determining whether probable cause exists for conducting a public hearing or hearings to deal with the complaint or belief. The investigation and initial proceedings shall be confidential. Upon beginning an initial proceeding, the commission shall notify the judge or justice of the existence of and basis for the initial proceeding.

(3) Whenever the commission concludes, based on an initial proceeding, that there is probable cause to believe that a judge or justice has violated a rule of judicial conduct or that the judge or justice suffers from a disability which is permanent or likely to become permanent and which seriously interferes with the performance of judicial duties, the commission shall conduct a public hearing or hearings and shall make public all those records of the initial proceeding that provide the basis for its conclusion. If the commission concludes that there is not probable cause, it shall notify the judge or justice of its conclusion.

(4) Upon the completion of the hearing or hearings, the commission in open session shall either dismiss the case, or shall admonish, reprimand, or censure the judge or justice, or shall censure the judge or justice and recommend to the supreme court the suspension or removal of the judge or justice, or shall recommend to the supreme court the retirement of the judge or justice. The commission may not recommend suspension or removal unless it censures the judge or justice for the violation serving as the basis for the recommendation. The commission may recommend retirement of a judge or justice for a disability which is permanent or likely to become permanent and which seriously interferes with the performance of judicial duties.

(5) Upon the recommendation of the commission, the supreme court may suspend, remove, or retire a judge or justice. 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 it suspends a judge or justice. The supreme court may not suspend, remove, or retire a judge or justice until the commission, after notice and hearing, recommends that action be taken, and the supreme court conducts a hearing, after notice, to review commission proceedings and findings against the judge or justice.

(6) Within thirty days after the commission admonishes, reprimands, or censures a judge or justice, the judge or justice shall have a right of appeal de novo to the supreme court.

(7) Any matter before the commission or supreme court may be disposed of by a stipulation entered into in a public proceeding. The stipulation shall be signed by the judge or justice and the commission or court. The stipulation may impose any terms and conditions deemed appropriate by the commission or court. A stipulation

shall set forth all material facts relating to the proceeding and the conduct of the judge or justice.

(8) 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.

(9) The legislature shall provide for commissioners' terms of office and compensation. The commission shall employ one or more investigative officers with appropriate professional training and experience. The investigative officers of the commission shall report directly to the commission. The commission shall also employ such administrative or other staff as are necessary to manage the affairs of the commission.

(10) The commission shall, to the extent that compliance does not conflict with this section, comply with laws of general applicability to state agencies with respect to rule-making procedures, and with respect to public notice of an attendance at commission proceedings other than initial proceedings. 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 No. 8210

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 VIII, section 10 of the Constitution of the state of Washington to read as follows:

Article VIII, section 10. Notwithstanding the provisions of section 7 of this Article, any county, city, town, quasi municipal corporation, municipal corporation, or political subdivision of the state which is engaged in the sale or distribution of water or energy may, as authorized by the legislature, use public moneys or credit derived from operating revenues from the sale of water or energy to assist the owners of structures or equipment in financing the acquisition and installation of materials and equipment for the conservation or more efficient use of water or energy in such structures or equipment. Except as provided in section 7 of this Article, an appropriate charge back shall be made for such extension of public moneys or credit and the same shall be a lien against the structure benefited or a security interest in the equipment benefited. Any financing for energy conservation authorized by this article shall only be used for conservation purposes in existing structures and shall not be used for any purpose which results in a conversion from one energy source to another.

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.