



2011 ASSEMBLY JOINT RESOLUTION 128

March 8, 2012 – Introduced by Representatives HEBL, JORGENSEN, ROYS, C. TAYLOR, BERCEAU, TURNER, PASCH, RICHARDS, BEWLEY, POPE-ROBERTS and KESSLER, cosponsored by Senators S. COGGS and C. LARSON. Referred to Committee on Judiciary and Ethics.

- 1 **To amend** section 4 (3) of article VII and section 11 of article VII of the constitution;
- 2 **relating to:** temporary service by a court of appeals judge in the supreme court
- 3 in judicial disciplinary proceedings (first consideration).

Analysis by the Legislative Reference Bureau

Article VII, section 11, of the Wisconsin Constitution, provides that justices and judges are subject to reprimand, censure, suspension, or removal for cause or for disability by the supreme court pursuant to procedures established by the legislature. Article VII, section 4 (3), of the Wisconsin Constitution, prohibits the temporary appointment of a court of appeals judge or circuit court judge to the supreme court.

This proposed constitutional amendment, proposed to the 2011 legislature on first consideration, requires that the supreme court assign on a temporary basis a court of appeals judge to aid in the proper disposition of judicial disciplinary proceedings in the supreme court to provide an odd number of justices for the consideration of the proceedings. The person assigned must be the most senior court of appeals judge eligible to be assigned.

Under current statutory law, the judicial commission is charged with investigating the alleged misconduct or permanent disability of a judge. If the judicial commission finds probable cause that a judge is engaging or has engaged in misconduct, it files a formal complaint with the supreme court. If the judicial commission finds probable cause that a judge has a permanent disability, it files a petition with the supreme court [s. 757.85, stats.].

After the judicial commission finds probable cause of misconduct or permanent disability and before it files a complaint or petition, the matter is heard by a panel

consisting of either three court of appeals judges or two court of appeals judges and one reserve judge or by a jury. The supreme court reviews the findings of fact, conclusions of law, and recommendations submitted following the hearing and determines appropriate discipline or action [ss. 757.87 and 757.91, stats.].

This amendment was prepared for the Joint Legislative Council's Special Committee on Judicial Discipline and Recusal.

A constitutional amendment requires adoption by two successive legislatures, and ratification by the people, before it becomes effective.

1 ***Resolved by the assembly, the senate concurring, That:***

2 **SECTION 1.** Section 4 (3) of article VII of the constitution is amended to read:

3 [Article VII] Section 4 (3) The chief justice of the supreme court shall be the
4 administrative head of the judicial system and shall exercise this administrative
5 authority pursuant to procedures adopted by the supreme court. The chief justice
6 may assign any judge of a court of record to aid in the proper disposition of judicial
7 business in any court of record except the supreme court unless assigned to the
8 supreme court on a temporary basis under section 11.

9 **SECTION 2.** Section 11 of article VII of the constitution is amended to read:

10 [Article VII] Section 11. Each justice or judge shall be subject to reprimand,
11 censure, suspension, removal for cause or for disability, by the supreme court
12 pursuant to procedures established by the legislature by law. No justice or judge
13 removed for cause shall be eligible for reappointment or temporary service. This
14 section is alternative to, and cumulative with, the methods of removal provided in
15 sections 1 and 13 of this article and section 12 of article XIII. The supreme court shall
16 assign on a temporary basis any person who has been elected to and is serving as a
17 judge of the court of appeals to aid in the proper disposition of judicial business under
18 this section in the supreme court to provide an odd number of justices for the
19 consideration of that business. The person assigned shall be the most senior judge
20 of the court of appeals, based upon days of service, who is eligible to be assigned.

