- 1 HB166
- 2 181843-1
- 3 By Representative Beckman (Constitutional Amendment)
- 4 RFD: Judiciary
- 5 First Read: 09-FEB-17

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181843-1:n:02/08/2017:MA/cj LRS2017-559

8 SYNOPSIS: Under the Constitution of Alabama of 1901, 9 the Court of the Judiciary is created to hear 10 complaints filed by the Judicial Inquiry 11 Commission, and a judge aggrieved by a decision of 12 the Court of the Judiciary may appeal the decision 13 to the Supreme Court of Alabama.

14 This bill would propose an amendment to the 15 Constitution of Alabama of 1901, requiring any 16 complaint against a Justice of the Alabama Supreme 17 Court or a Judge of the Court of Criminal Appeals 18 or the Court of Civil Appeals for a violation of 19 any Canon of Judicial Ethics, misconduct in office, 20 failure to perform his or her duties, or charge 21 that the justice or judge is physically or mentally 22 unable to perform his or her duties, be filed with 23 the House Judiciary Committee for a determination 24 of whether a Justice of the Supreme Court or a 25 Judge of the Court of Criminal Appeals or the Court 26 of Civil Appeals would be impeached by the 27 Legislature or tried by the Court of Criminal

Appeals for the removal of a Justice of the Alabama 1 2 Supreme Court or Judge of the Court of Civil Appeals or by the Court of Civil Appeals for a 3 4 Judge of the Court of Criminal Appeals. 5 6 A BILL 7 TO BE ENTITLED 8 AN ACT 9 10 To amend Section 6.17 of Amendment 328, as amended 11 by Amendment 581, now appearing as Section 156 of the Official 12 Recompilation of the Constitution of Alabama of 1901, as 13 amended, to require any complaint initiated by the Judicial 14 Inquiry Commission concerning a Justice of the Supreme Court 15 or a Judge of the Court of Criminal Appeals or the Court of 16 Civil Appeals to be filed with the House Judiciary Committee 17 for a determination of whether to proceed with impeachment 18 proceedings before the Legislature or the Court of Criminal 19 Appeals or the Court of Civil Appeals; to require the Supreme 20 Court to adopt rules governing the removal of a Justice of the 21 Alabama Supreme Court or a Judge of the Court of Criminal 22 Appeals or the Court of Civil Appeals by the Court of Criminal 23 Appeals or the Court of Civil Appeals; and to require the 24 Legislature to adopt rules governing the procedures of the 25 legislative impeachment process. 26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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Section 1. The following amendment to the Constitution of Alabama of 1901, as amended, is proposed and shall become valid as a part thereof when approved by a majority of the qualified electors voting thereon and in accordance with Sections 284, 285, and 287 of the Constitution of Alabama of 1901, as amended:

## PROPOSED AMENDMENT

8 Section 1. Section 6.17 of Amendment 328, as amended 9 by Amendment 581, now appearing as Section 156 of the Official 10 Recompilation of the Constitution of Alabama of 1901, as 11 amended, is amended to read as follows:

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12 "Section 156. (a) A Judicial Inquiry Commission is 13 created consisting of nine members. The Supreme Court shall appoint one appellate judge who shall not be a Justice on the 14 15 Supreme Court; the Circuit Judges' Association shall appoint 16 two judges of the circuit court; the Governor shall appoint 17 three persons who are not lawyers, who shall be subject to 18 Senate confirmation before serving; the Lieutenant Governor 19 shall appoint one district judge who shall be subject to 20 Senate confirmation; and the governing body of the Alabama 21 State Bar shall appoint two members of the state bar to serve 22 as members of the commission. Provided, however, that on 23 January 1, 2005, the appointment authority granted to the 24 Lieutenant Governor shall revert to the Governor and the 25 Governor shall thereafter be entitled to appoint three persons 26 who are not lawyers and one district judge, all subject to 27 Senate confirmation. The commission shall select its own

chair. The terms of the members of the commission shall be
 four years. A vacancy on the commission shall be filled for a
 full term in the manner the original appointment was made.

"(b) (1) The commission shall be convened 4 5 permanently with authority to conduct investigations and receive or initiate complaints concerning any judge of a court 6 7 of the judicial system of this state. The commission shall 8 file a complaint with the Court of the Judiciary for a judge other than a Justice of the Supreme Court or a Judge of the 9 10 Court of Criminal Appeals or Court of Civil Appeals in the event that a majority of the members of the commission decide 11 12 that a reasonable basis exists, (1) to charge  $\frac{1}{2}$  the judge with violation of any Canon of Judicial Ethics, misconduct in 13 office, failure to perform his or her duties, or (2) to charge 14 15 that the judge is physically or mentally unable to perform his 16 or her duties. If a majority of the members of the commission 17 decide that a reasonable basis exists to charge a Justice of 18 the Supreme Court or a Judge of the Court of Criminal Appeals 19 or the Court of Civil Appeals with a violation of a Canon of 20 Judicial Ethics, misconduct in office, or failure to perform his or her duties or to charge that the justice or judge is 21 22 physically or mentally unable to perform his or her duties, 23 the commission shall file a complaint with the House Judiciary 24 Committee.

"(2) Pursuant to subdivision (3), the Court of
 Criminal Appeals may try a Justice of the Alabama Supreme
 Court or a Judge of the Court of Civil Appeals and the Court

2Appeals. The Court of Criminal Appeals shall have the3authority to remove from office, suspend without pay, or4censure a Justice of the Supreme Court or a Judge of the Court5of Civil Appeals and the Court of Civil Appeals shall have the6authority to remove from office, suspend without pay, or7censure a Judge of the Court of Criminal Appeals.8"(3) The House Judiciary Committee shall make a9determination of whether the complaint is to be subject to an10impeachment proceeding before the Legislature or heard by the11Court of Criminal Appeals or the Court of Civil Appeals. All12proceedings of the commission shall be confidential except13filing of a for the complaint filed with the Court of the14Judiciary or the House Judiciary Committee. The commission15shall prosecute the complaints a complaint before the Court of16Criminal Appeals or the Court of Civil Appeals.17"(c) The Supreme Court shall adopt rules governing18the procedures of the commission and the Court of Criminal19Appeals and the Court of Civil Appeals for determining whether20a Justice of the Alabama Supreme Court or a Judge of the Court21of Criminal Appeals or the Court of any judge that is a Justice23(d) The Legislature shall adopt rules governing the24procedures for the impeachment of any judge that is a Justice25of the Alabama Supreme Court or a judge of the Court of26Criminal Appeals or the Court of Civil Appeals. </th <th>1</th> <th>of Civil Appeals may try a Judge of the Court of Criminal</th>	1	of Civil Appeals may try a Judge of the Court of Criminal
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26 <u>Criminal Appeals or the Court of Civil Appeals.</u>	25	of the Alabama Supreme Court or a judge of the Court of
	26	Criminal Appeals or the Court of Civil Appeals.

"(d) The commission shall have subpoena power and authority to appoint and direct its staff. Members of the commission who are not judges shall receive per diem compensation and necessary expenses; members who are judges shall receive necessary expenses only. The Legislature shall appropriate funds for the operation of the commission.

Section 2. Section 158 of Amendment 328, now
appearing as Section 158 of the Official Recompilation of the
Constitution of Alabama of 1901, as amended, is amended to
read as follows:

11 "Section 158. In addition to the authority conferred 12 on the Court of the Judiciary in Section 6.18, the The 13 provisions for impeachment in Article VII, Section 173, shall also apply to Justices of the Supreme Court and Judges of the 14 15 Courts of Appeals. No proceeding for impeachment under Article VII, Section 173, may proceed or be initiated against a judge 16 17 while the same charge or subject matter is under consideration 18 by the Judicial Inquiry Commission or the Court of the 19 Judiciary. A finding of lack of probable cause or a 20 termination of proceeding without a finding of wrongdoing by 21 either the Judicial Inquiry Commission or the Court of the 22 Judiciary shall constitute a complete defense to proceedings 23 of impeachment under Article VII, Section 173, and shall bar 24 all further proceedings of impeachment as to the same charge 25 or subject matter. No justice or judge who has been tried 26 before the Court of the Judiciary shall be subject to 27 impeachment on the same charge or subject matter. No conduct

that occurred prior to the effective date of this amendment 1 2 may be the basis of a proceeding of impeachment under this section. No proceeding in impeachment under this section may 3 be initiated without the verification, under oath, of at least 4 5 12 members of the House of Representatives as to the factual basis of the charge under which the article of impeachment is 6 7 preferred. No article of impeachment shall be passed upon less than two-thirds majority of the House of Representatives and 8 no conviction of impeachment shall be had upon less than 9 10 two-thirds majority of the Senate under this section. 11 Dissatisfaction with the ruling of a judge or justice shall not be a ground upon which impeachment under this section may 12 13 proceed."

14 Section 2. An election upon the proposed amendment 15 shall be held in accordance with Sections 284 and 285 of the 16 Constitution of Alabama of 1901, now appearing as Sections 284 17 and 285 of the Official Recompilation of the Constitution of 18 Alabama of 1901, as amended, and the election laws of this 19 state.

20 Section 3. The appropriate election official shall 21 assign a ballot number for the proposed constitutional 22 amendment on the election ballot and shall set forth the 23 following description of the substance or subject matter of 24 the proposed constitutional amendment:

25 "Proposing an amendment to the Constitution of
26 Alabama of 1901, to provide for the impeachment by the
27 Legislature or trial by the Court of Criminal Appeals or the

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Court of Civil Appeals for Justices of the Supreme Court or
 Judges of the Court of Criminal Appeals or the Court of Civil
 Appeals.

4 "Proposed by Act \_\_\_\_\_."
5 This description shall be followed by the following
6 language:
7 "Yes () No ()."