SB216

197669-5

By Senators Orr and Ward (Constitutional Amendment)

RFD: Judiciary

First Read: 02-APR-19
A BILL

TO BE ENTITLED

AN ACT

Proposing an amendment to the Constitution of Alabama of 1901, to amend Section 6.05 of Amendment 328; Section 6.09 of Amendment 328, as further amended by Amendment 426; Sections 6.10, 6.12, 6.14, and 6.16 of Amendment 328; Sections 6.17 and 6.18 of Amendment 328, as amended by Amendment 581; Sections 6.19 and 6.20 of Amendment 328, and Sections 173 and 174 of the Constitution of Alabama of 1901, now appearing as Sections 143, 148, 149, 151, 153, 155, 156, 157, 159, 160, 162, 173, and 174 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, to delete the requirement that a district court hold court in each incorporated municipality with a population of 1,000 or more where there is no municipal court; to provide that the procedure for the filling of vacancies in the office of a judge may be changed by statewide or local constitutional amendment; to increase the age restriction on elected or appointed judicial officers to 75 years; to delete certain
language relating to a constable holding more than one state
office; to delete a provision providing for the temporary
maintenance of the prior judicial system; to repeal the office
of circuit solicitor; to make certain nonsubstantive stylistic
changes; to increase the membership of the Judicial Inquiry
Commission; to further provide for the appointment of the
commission's members; to further provide for the appointment
of the membership of the Court of the Judiciary; to provide
further for the process of disqualifying an active judge; and
to remove provisions authorizing the impeachment of the
justices of the Supreme Court and judges of the appellate
courts; to remove provisions authorizing the Supreme Court to
remove judges of the district and circuit courts, judges of
the probate courts, and judges of certain other courts; to
delete the authority of the Chief Justice of the Supreme Court
to appoint an Administrative Director of Courts; to provide
the Supreme Court of Alabama with authority to appoint an
Administrative Director of Courts; and to require the
Legislature to establish procedures for the appointment of the
Administrative Director of Courts; and to repeal Amendment
580, Section 6.21 of Amendment 328, and Amendment 226 of the
Constitution of Alabama of 1901, now appearing as Sections
158, 161, and 162 of the Official Recompilation of the
Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

(a) The following amendments to the Constitution of
Alabama of 1901 are repealed:

(1) Amendment 580 of the Constitution of Alabama of
1901, now appearing as Section 158 of the Official
Recompilation of the Constitution of Alabama of 1901, as
amended.

(2) Section 6.21 of Amendment 328 of the
Constitution of Alabama of 1901, now appearing as Section 161
of the Official Recompilation of the Constitution of Alabama
of 1901, as amended.

(3) Amendment 226 of the Constitution of Alabama of
1901, now appearing as Section 162 of the Official
Recompilation of the Constitution of Alabama of 1901, as
amended.

(b) Section 6.05 of Amendment 328; Section 6.09 of
Amendment 328, as further amended by Amendment 426; Sections
6.10, 6.12, 6.14, and 6.16 of Amendment 328; Sections 6.17 and
6.18 of Amendment 328, as amended by Amendment 581; Sections
6.19 and 6.20 of Amendment 328, and Sections 173 and 174 of
the Constitution of Alabama of 1901, now appearing as Sections
143, 148, 149, 151, 153, 155, 156, 157, 159, 160, 162, 173,
and 174 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, are amended to read as follows:

"Amendment 328.

"Section 6.05.

"(a) The district court shall be a court of limited jurisdiction and shall exercise uniform original jurisdiction in such cases, and within such the geographical boundaries as shall be prescribed by law, provided that the district court shall hold court in each county seat and at such other places as prescribed by law.

"(b) The district court shall have jurisdiction of all cases arising under ordinances of municipalities in which there is no municipal court and shall hold court in each incorporated municipality of a population of 1000 or more where there is no municipal court at places prescribed by law.

"Amendment 328, as amended by Amendment 426.

"Section 6.09.

"(a) A state judicial compensation commission is hereby created which shall recommend the salary and expense allowances to be paid from the state treasury for all the judges of this state, except for judges of the probate court. The commission shall consist of five members: one shall be appointed by the governor, one by the president of the senate, one by the speaker of the house, and two by the governing body of the Alabama state bar.
(b) Members of the judicial compensation commission shall serve for terms of four years. Any vacancy on the commission shall be filled in the same manner in which such position was originally filled. The Legislature shall appropriate sufficient funds for the expenses of the commission.

(c) No member of the commission shall hold any other public office, or office in any political party, and no member of the commission shall be eligible for appointment to a state judicial office so long as he or she is a member of the commission and for two years thereafter.

(d) The commission may submit a report to the Legislature at any time within the first five calendar days of any session. The recommendations of the commission shall become law upon confirmation by a joint resolution or such recommendations may be altered by an act of the Legislature at the session to which the report is submitted. The compensation of a judge shall not be diminished during his or her official term.

Amendment 328.

Section 6.10.

(a) The Chief Justice of the Supreme Court shall be the administrative head of the judicial system. He shall appoint an administrative director of courts and other needed personnel to assist him with his administrative tasks. The Supreme Court shall appoint an Administrative Director of Courts according to procedures
provided by general law. The Administrative Director of Courts shall assist the Chief Justice with his or her administrative tasks. The Chief Justice may assign appellate justices and judges to any appellate court for temporary service and may assign trial judges, supernumerary justices and judges, and retired trial judges and retired appellate judges for temporary service in any court.

"(b) The Legislature shall provide adequate and reasonable financing for the entire unified judicial system. Adequate and reasonable appropriations shall be made by the Legislature for the entire unified judicial system, exclusive of probate courts and municipal courts. The Legislature shall receive recommendations for appropriations for the trial courts from the Administrative Director of Courts and for the appellate courts from each such court. The Legislature shall establish procedures for the appointment of the Administrative Director of Courts.

"Amendment 328.

"Section 6.12.

"(a) The Supreme Court shall establish criteria for determining the number and boundaries of judicial circuits and districts, and the number of judges needed in each circuit and district. If the Supreme Court finds that a need exists for increasing or decreasing the number of circuit or district judges, or for changing the

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boundaries of judicial circuits or districts, it shall, at the
beginning of any session of the legislature, the
court shall certify its findings and recommendations to the
legislature.

"(b) If a bill is introduced at any session of the
legislature to increase or decrease the number of
circuit or district judges, or to change the boundaries of any
judicial circuit or district, the supreme court must, within three weeks, shall report to the legislature its recommendations on the proposed change. No
change shall be made in the number of circuit or district
judges, or the boundaries of any judicial circuit or district,
unless authorized by an act adopted after the recommendation
of the supreme court on such proposal has been filed with the legislature.

"(c) An act decreasing the number of circuit or
district judges shall not affect the right of any judge to
hold his or her office for his or her full term.

"Amendment 328.


"The office of a judge shall be vacant if he or she
dies, resigns, retires, or is removed. Vacancies in any
judicial office shall be filled by appointment by the governor;
however, vacancies occurring in any judicial office in
Jefferson county shall be filled as now provided by amendments
83 and 110 to the Constitution of Alabama of 1901 [Jefferson
County §§ 8 and 9] and vacancies occurring in Shelby, Madison,
Wilcox, Monroe, Conecuh, Clarke, Washington, Henry, Etowah, Walker, Tallapoosa, Pickens, Greene, Tuscaloosa, St. Clair county shall be filled as provided in the Constitution of 1901 with amendments now or hereafter adopted, or as may be otherwise established by a properly advertised and enacted local law Governor, except as specified by a separate local constitutional amendment now existing or hereafter adopted that affects only one county or a political subdivision within one or more counties. A judge, other than a probate judge, appointed to fill a vacancy, shall serve an initial term lasting until the first Monday after the second Tuesday in January following the next general election held after he or she has completed one year in office. At such election, such judicial office shall be filled for a full term of office beginning at the end of the appointed term.

"Amendment 328.
"Section 6.16.

The legislature Legislature shall provide by law for the retirement of judges, including supernumerary judges, with such conditions, retirement benefits, and pensions for them the judges and their dependents as it the Legislature may prescribe. No person shall be elected or appointed to a judicial office after reaching the age of seventy 70 years, provided that a judge over the age of seventy 70 years may be appointed to the office of supernumerary judge if he or she is not eligible to receive state judicial retirement benefits.

"Amendment 328, as amended by Amendment 581.
"Section 6.17.

(a) A Judicial Inquiry Commission is created consisting of nine members. The Supreme Court shall appoint one appellate judge who shall not be a Justice on the Supreme Court; the Circuit Judges' Association shall appoint two judges of the circuit court; the Governor shall appoint three persons who are not lawyers, who shall be subject to Senate confirmation before serving; the Lieutenant Governor shall appoint one district judge who shall be subject to Senate confirmation the District Judges' Association shall appoint one judge of the district court; the Probate Judges' Association shall appoint one judge of the probate court; the Municipal Judges' Association organized under the Alabama League of Municipalities shall appoint one judge of the municipal court; and the governing body of the Alabama State Bar shall appoint two members of the state bar to serve as members of the commission. The nominating authorities shall make every effort to coordinate their appointments to assure commission membership is inclusive and reflects the racial, gender, geographic, urban, rural, and economic diversity of the state without regard to political affiliation. Provided, however, that on January 1, 2005, the appointment authority granted to the Lieutenant Governor shall revert to the Governor and the Governor shall thereafter be entitled to appoint three persons who are not lawyers and one district judge, all subject to Senate confirmation. The commission shall select its own chair. The terms of the members of the
1 commission shall be four years and each member may serve no
2 more than two consecutive terms. A vacancy on the commission
3 shall be filled for a full term in the manner the original
4 appointment was made.

5 "(b) The commission shall be convened permanently
6 with authority to conduct investigations and receive or
7 initiate complaints concerning any judge of a court of the
8 judicial system of this state. The commission shall file a
9 complaint with the Court of the Judiciary in the event that a
10 majority of the members of the commission decide that a
11 reasonable basis exists, (1) to charge a judge with violation
12 of any Canon of Judicial Ethics, misconduct in office, or
13 failure to perform his or her duties, or (2) to charge that
14 the judge is physically or mentally unable to perform his or
15 her duties. All proceedings of the commission shall be
16 confidential except the filing of a complaint with the Court
17 of the Judiciary. The commission shall prosecute the
18 complaints.

19 "(c) The Supreme Court shall adopt rules governing
20 the procedures of the commission.

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

27 "Amendment 328, as amended by Amendment 581.
"Section 6.18.

(a) The Court of the Judiciary is created consisting of one judge of an appellate court, other than the Supreme Court, who shall be selected by the Supreme Court and shall serve as Chief Judge of the Court of the Judiciary; two judges of the circuit court, who shall be selected by the Circuit Judges' Association; and one district judge of the district court, who shall be selected by the District Judges' Association. Other members of the Court of the Judiciary shall consist of two members of the state bar, who shall be selected by the governing body of the Alabama State Bar; two and three persons who are not lawyers, who shall be appointed by the Governor; and one person appointed by the Lieutenant Governor. The nominating authorities shall make every effort to coordinate their appointments to assure court membership is inclusive and reflects the racial, gender, geographic, urban, rural, and economic diversity of the state without regard to political affiliation. Members appointed by the Governor and Lieutenant Governor shall be subject to Senate confirmation before serving. Provided, however, that on January 1, 2005, the appointment authority granted to the Lieutenant Governor shall revert to the Governor and the Governor shall thereafter be entitled to appoint three persons who are not lawyers, subject to Senate confirmation. The court shall be convened to hear complaints filed by the Judicial Inquiry Commission. The court shall have authority, after notice and public hearing, to do either of the following:
(1) to remove Remove from office, suspend, with or without pay, or censure a judge, or apply such any other sanction as may be prescribed by law, for a violation of a Canon of Judicial Ethics, misconduct in office, or failure to perform his or her duties.

(2) to suspend Suspend, with or without pay, or to retire a judge who is physically or mentally unable to perform his or her duties.

"(b) A judge aggrieved by a decision of the Court of the Judiciary may appeal to the Supreme Court. The Supreme Court shall review the record of the proceedings on the law and the facts.

"(c) The Supreme Court shall adopt rules governing the procedures of the Court of the Judiciary.

"(d) The Court of the Judiciary shall have power to may issue subpoenas. The Legislature shall provide by law for the expenses of the court.

"Amendment 328.

"Section 6.19.

"(a) A judge shall be disqualified from acting as a judge, without loss of salary, while there is pending in either of the following circumstances:

"(1) An indictment or an information charging him or her in the United States with a crime punishable as a felony under a state or federal law, or is pending.

"(2) A complaint against him filed by the judicial inquiry commission with the court of the judiciary, or her
recommending disqualification adopted by a two-thirds vote of
the Judicial Inquiry Commission is pending with the Court of
the Judiciary and both of the following conditions are met:

"a. The complaint alleges the judge is physically or
mentally unable to perform his or her judicial duties or poses
a substantial threat of serious harm to the public or the
administration of justice.

"b. The recommendation of disqualification is
approved by the Chief Judge of the Court of the Judiciary.

"(b) A judge who is suspended pursuant to
subdivision (2) of subsection (a) shall have the opportunity
to request a review of the suspension pursuant to rules of
procedure adopted by the Supreme Court to govern the Court of
the Judiciary.

"Amendment 328.

"Section 6.20.

"(a) A district attorney for each judicial circuit
shall be elected by the qualified electors of those counties
in such circuit. Such The district attorney shall be licensed
to practice law in this state and shall, at the time of his or
her election and during his or her continuance in office,
shall reside in his or her circuit. He or she shall receive such
compensation as provided by law. Vacancies in the office of
district attorney and in his or her staff shall be filled as
provided by law.
(b) Clerks of the circuit courts shall be elected by the qualified electors in each county for a term of six years. If the office of register in chancery continues to be provided by law, then the clerk of the circuit court may also fill such office in a manner prescribed by law. Vacancies in the office of clerk of the circuit court shall be filled by the judge or judges of the circuit court who have jurisdiction over the county in which the office of clerk of the circuit court is located.

"(c) Persons elected to the position of constable to assist the courts of the state as provided by law shall be subject to the same restrictions, rights and limitations as are specified in section 280 of the Constitution of 1901, and no law shall prohibit the receipt of fees for the performance of official duties of said position while holding any other elected or appointed office.

"(d) The revenue from fines, forfeitures, and court costs produced in district courts from the exercise of jurisdiction under municipal ordinances shall be apportioned between the municipality and the state as shall be provided by law.

"Section 173.

"(a) The Governor, Lieutenant Governor, Attorney General, State Auditor, Secretary of State, State Treasurer, members of the State Board of Education, and Commissioner of Agriculture and Industries, and justices of the supreme court may be removed from office for willful neglect of duty,
corruption in office, incompetency, or intemperance in the use of intoxicating liquors or narcotics to such an extent, in view of the dignity of the office and importance of its duties, as unfits the officer for the discharge of such duties for any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith.

"(b) The House of Representatives shall present articles or charges of impeachment against those persons identified in subsection (a), specifying the cause to the Senate.

"(c) The Senate, sitting as a court of impeachment, shall take testimony under oath on articles or charges preferred by the House of Representatives.

"(d) The Lieutenant Governor shall preside over the Senate when sitting as a court of impeachment, provided, however, that if the Governor or Lieutenant Governor is impeached, the Chief Justice, or if the Chief Justice be absent or disqualified, then one of the associate justices of the supreme court, to be selected by the court, shall preside over the Senate when sitting as a court of impeachment. No person may be convicted by the Senate sitting as a court of impeachment without the concurrence of two-thirds of the members present.

"(e) If at any time when the Legislature is not in session, a majority of all the members elected to the House of Representatives shall certify in writing to the Secretary of State their desire to meet to consider the impeachment of the
Governor, Lieutenant Governor, or other officer administering the office of Governor, it shall be the duty of the Secretary of State immediately to notify the Speaker of the House who, within 10 days after receipt of the notice, shall summon the members of the House to assemble at the capitol on a day to be fixed by the Speaker, but not later than 15 days after receipt of the notice by the Speaker from the Secretary of State, to consider the impeachment of the Governor, Lieutenant Governor, or other officer administering the office of Governor.

"(f) If the House of Representatives prefers articles of impeachment, the Speaker of the House shall forthwith notify the Lieutenant Governor, unless he or she is the officer impeached, in which event the President Pro Tempore of the Senate shall be notified, who shall summon the members of the Senate to assemble at the capitol on a specified day not later than 10 days after receipt of the notice from the Speaker of the House, for the purpose of hearing and trying the articles of impeachment against the Governor, Lieutenant Governor, or other officer administering the office of Governor, as may be preferred by the House of Representatives.

"Section 174.

"The judges of the district and circuit courts, judges of the probate courts, and judges of other courts from which an appeal may be taken directly to the supreme court, district District attorneys, and sheriffs may be removed from office for any of the causes specified in Section 173 or
elsewhere in this constitution, by the supreme court, or under such regulations as may be prescribed by rule of the Supreme Court of Alabama or law. The Legislature may provide for the impeachment or removal of other officers than those named in this article."

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

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

"Proposing an amendment to the Constitution of Alabama of 1901, to increase the membership of the Judicial Inquiry Commission and further provide for the appointment of the additional members; further provide for the membership of the Court of the Judiciary and further provide for the appointment of the additional members; further provide for the process of disqualifying an active judge; repeal provisions providing for the impeachment of Supreme Court Justices and appellate judges and the removal for cause of the judges of the district and circuit courts, judges of the probate courts, and judges of certain other courts by the Supreme Court;
delete the authority of the Chief Justice of the Supreme Court to appoint an Administrative Director Courts; provide the Supreme Court of Alabama with authority to appoint an Administrative Director of Courts; require the Legislature to establish procedures for the appointment of the Administrative Director of Courts; delete the requirement that a district court hold court in each incorporated municipality with a population of 1,000 or more where there is no municipal court; provide that the procedure for the filling of vacancies in the office of a judge may be changed by local constitutional amendment; delete certain language relating to the position of constable holding more than one state office; delete a provision providing for the temporary maintenance of the prior judicial system; repeal the office of circuit solicitor; and make certain nonsubstantive stylistic changes.

"Proposed by Act ________." This description shall be followed by the following language:

"Yes ( )  No ( )."
Senate

Read for the first time and referred to the Senate committee on Judiciary............................ 02-APR-19

Read for the second time and placed on the calendar 1 amendment................................. 11-APR-19

Read for the third time and passed as amended .... 30-APR-19

Yeas 28
Nays 0

Patrick Harris,
Secretary.