

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CVJS 11-05 Judicial Qualifications Commission

SPONSOR(S): Civil Justice Subcommittee

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1704

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|--------|----------|--|
| Orig. Comm.: Civil Justice Subcommittee | | Woodburn | Bond |

SUMMARY ANALYSIS

The Judicial Qualifications Commission is responsible for investigating allegations of wrongdoing by Florida justices and judges. Where appropriate, the commission recommends discipline to the Supreme Court. Nearly all records of the commission are confidential. Only if formal charges are filed are records open, and then only the records created after the filing of charges are open.

The proposed joint resolution amends the state constitution to provide that most records and proceedings of the Judicial Qualifications Commission are open to public inspection and copying once the commission has determined whether or not to file formal charges. However, records that are otherwise exempt from public disclosure will remain exempt.

This proposed joint resolution appears to require a nonrecurring expense of approximately \$200,000 payable from the General Revenue Fund in FY 2012-13 for required advertising of the proposed joint resolution. This proposed joint resolution does not appear to have a fiscal impact on local governments.

The proposed joint resolution, if passed by the Legislature, would be considered by the electorate at the November, 2012, general election. A joint resolution must be passed by a three-fifths vote of the membership of each house of the Legislature.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Judicial Qualifications Commission

The Judicial Qualifications Commission (JQC) is established by art. V, s. 12 of the state constitution. The JQC is charged with investigating and recommending to the Supreme Court the discipline, including the removal from office, of any justice or judge whose conduct warrants such discipline.¹

The JQC membership is comprised of:

- Two judges from the district courts of appeal (selected by the judges of the district courts of appeal).
- Two judges from the circuit courts (selected by the judges of the circuit courts).
- Two judges from the county courts (selected by the judges of the county courts).
- Four electors who are members of the Florida Bar (selected by the governing body of the Florida Bar).
- Five electors who have never held judicial office nor been members of the Florida Bar (selected by the Governor).

The members of the commission serve six year terms.² The commission is divided into two panels; an investigative panel and a hearing panel.³ The investigative panel receives or initiates complaints, conducts investigations, dismisses complaints, and, upon a majority vote of the panel, submits formal charges to the hearing panel.⁴ The process to this point is confidential.

The hearing panel receives and hears formal charges filed by the investigative panel. By majority vote, the hearing panel may recommend discipline. By a two-thirds vote, the hearing panel may recommend removal of a justice or judge or the involuntary retirement of a justice or judge for any disability that seriously interferes with the performance of judicial duties.⁵ The Supreme Court, upon receiving the recommendation from the hearing panel, may accept, reject, or modify in whole or in part the recommendation.⁶

In FY 2009-2010, the Judicial Qualifications Commission received 620 complaints and filed formal charges against 6 judges.

Public Records Laws

The state constitution provides that all proceedings before the Judicial Qualifications Commission are confidential until formal charges against a justice or judge are filed by the investigative panel with the Clerk of the Supreme Court. Once the formal charges have been filed the proceedings before the hearing panel and before the Supreme Court are open to the public. If, however, the investigative panel votes to not pursue formal charges regarding a complaint, then the records of the complaint and investigation never become public.

Florida has a long history of open public records. Article 1, s. 24(a) of the state constitution (which is not applicable to the JQC) provides that:

¹ Article V sec. 12(a)(1), Florida Constitution.

² Article V sec. 12(a)(2), Florida Constitution, provides that a member's term may not exceed six years as prescribed by general law. Section 43.20, F.S., provides for six year terms.

³ Article V s. 12(b), Florida Constitution.

⁴ Id.

⁵ Id.

⁶ Article V s. 12(c)(1), Florida Constitution.

Every person has a right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities and districts; and each commission, or entity created pursuant to law or this Constitution.

This openness is reflected in the laws relating to the public records of the Florida Commission on Ethics.⁷ Similar to the JQC, the Commission on Ethics investigates allegations of wrongdoing by state officials. Unlike the JQC, however, most records of the Commission on Ethics become public records open for inspection and copying. Specifically, a record of the Commission on Ethics is open once either the complaint is dismissed or the Commission on Ethics determines that probable cause exists to conduct a formal hearing.

Effect of the Bill

This joint resolution amends art. V, s. 12(a)(4) of the state constitution to require that most records, materials and proceedings relating to complaints and proceedings before the Judicial Qualifications Commission be open to public inspection and copying upon the determination by the JQC whether or not formal charges will be filed. However, records that are otherwise exempt from public disclosure will remain exempt.⁸

The effect of the amendment is that records of the Judicial Qualifications Commission would be open in a manner similar to those of the Commission on Ethics.

The joint resolution also removes outdated constitutional provisions related to the JQC.

B. SECTION DIRECTORY:

n/a

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Article XI, s. 5(d), Fla. Const., requires that a proposed constitutional amendment must be published in one newspaper of general circulation in each county in which a newspaper is published. The Department of State has estimated that publication cost at \$106.14 per word. At 1821 words, the estimated cost is \$193,281. This nonrecurring cost would be payable from General Revenue in FY 2012-2013.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

⁷ See s. 112.320, F.S. The Commission on Ethics was created to serve as the guardian of the standards of conduct for the officers and employees of the state, county, city and other political subdivisions of the state. The commission is similar to the JQC but instead has jurisdiction over the executive and legislative branch.

⁸ For instance, if part of the investigation involved review of a juvenile record normally exempt from public disclosure, the exemption would remain and that part of the investigatory file would not be disclosed.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

A mandates analysis is inapplicable as this bill is a proposed constitutional amendment.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This is a legislative joint resolution, which is one of the methods for proposing, approving or rejecting amendments to the Florida Constitution. The joint resolution requires passage by a three-fifths vote of the membership of each house of the Legislature. The proposed constitutional amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. If approved by sixty percent of the electors voting on the question, the proposed amendment becomes effective on the Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a