

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 162

SPONSOR: Judiciary Committee and Senator Burt

SUBJECT: Judicial Qualifications Commission

DATE: March 5, 2002

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Article V, s. 12, Fla. Const., provides for the creation of a Judicial Qualifications Commission (JQC or “commission”). The JQC investigates and recommends to the Supreme Court of Florida the removal from office of any justice or judge whose conduct demonstrates a present unfitness to hold office. The JQC recommends discipline to a justice or judge for whom discipline is warranted. The JQC also investigates allegations of incapacity during service as a justice or judge.

Records and proceedings before the JQC after the filing of formal charges are public. Records and proceedings before the JQC prior to the filing of formal charges are confidential. If the JQC makes a finding of no probable cause and does not file formal charges, the records never become public. PCB SB 162 is a joint resolution amending the Florida Constitution to provide that records and proceedings of the JQC become public after a finding of no probable cause unless exempted from public disclosure by general law.

This joint resolution, if approved by the voters, would be effective July 1, 2003.

This bill substantially amends section 12, Article V, of the Florida Constitution.

II. Present Situation:

Judicial Qualifications Commission

Article V, s. 12, Fla. Const., provides for the creation of a Judicial Qualifications Commission (“JQC” or “commission”). The JQC investigates and recommends to the Supreme Court of Florida the removal from office of any justice or judge whose conduct demonstrates a present

unfitness to hold office. The JQC recommends discipline¹ to a justice or judge for whom discipline is warranted. The JQC also investigates allegations of incapacity during service as a justice or judge. See Art. V, s. 12(a)(1), Fla. Const.

The provisions of Art. V, s. 12, Fla. Const., relating to removal of justices and judges from office are cumulative and alternative to the legislative power of impeachment and removal from office. See Art. V, s. 12(d), Fla. Const. The fact that either the JQC or the Legislature is conducting proceedings against a justice or judge does not preclude the other body from taking action.

The JQC is composed of two judges of district courts of appeal selected by the judges of those courts, two circuit judges selected by the judges of the circuit courts, two judges of county courts selected by the judges of those courts, four members of The Florida Bar who are Florida residents and are selected by The Florida Bar, and five Florida residents who have never held judicial office or been members of The Florida Bar who are appointed by the Governor. See Art. V, s. 12(a)(1), Fla. Const. The members of the JQC serve staggered terms, not to exceed six years. See Art. V, s. 12(a)(2), Fla. Const.

Pursuant to Art. V, s. 12(a)(4), the JQC must adopt rules regulating its proceedings, the filing of vacancies by the appointing authorities, the disqualification of members, the rotation of members between the panels, and the temporary replacement of incapacitated members. General law enacted by a majority vote of each house of the legislature or the Supreme Court, five members concurring, may repeal the commission's rules. See Art. V, s. 12(a)(4), Fla. Const.

The JQC is divided into an investigative panel and a hearing panel. The investigative panel receives and initiates complaints, conducts investigations, dismisses complaints, and submits formal charges to the hearing panel. The hearing panel receives and hears formal charges from the investigative panel. The hearing panel may recommend removal of a justice or judge from office upon a two-thirds vote of the panel. The hearing panel may recommend discipline by simple majority vote. See Art. V, s. 12(b), Fla. Const.

Judicial Qualifications Commissions and Public Records

Until formal charges are filed with the clerk of the Supreme Court, all records and proceedings of the JQC are confidential. See Art. V, s. 12(a)(4), Fla. Const. Records of the JQC prior to the filing of formal charges are also confidential. See *In re: Graziano*, 696 So. 2d 744, 751 (Fla. 1997)(holding that original complaint in a JQC proceeding is a confidential document and respondent's due process rights were not violated when the document was not disclosed). If formal charges are never filed, the records never become public.

Upon a finding of probable cause and the filing of formal charges with the clerk of the Supreme Court, the charges, records, and all further proceedings are public. See Art. V, s. 12(a)(4), Fla. Const. Florida Judicial Qualifications Commission Rule 23(c) states:

¹ "Discipline" means "any or all of the following: reprimand, fine, suspension with or without pay, or lawyer discipline." Art. V, s. 12(a)(1). Therefore, the term "discipline" does not include lawyer removal.

Every witness in every proceeding under these Rules shall be sworn to tell the truth and not to disclose the existence of the proceeding, the subject matter thereof, or the identity of the judge until the proceeding is no longer confidential under these Rules. Violation of this oath shall be an act of contempt of the Commission.

The Florida Supreme Court has explained the purpose behind keeping portions of JQC proceedings confidential:

We have explained that confidentiality allows the JQC to process efficiently complaints from any and all sources while protecting the complainant from recriminations and the judicial officer from unsubstantiated charges.

In re: Graziano, 696 So. 2d 744, 751 (Fla. 1997).

When the JQC Investigative Panel receives information relating to actions by a judge, it may investigate whether formal charges should be initiated. See Fla.Jud.Qual.Comm'n.R. 6(a). The Investigative Panel must notify the judge of the investigation and the general nature of the investigation prior to the filing of formal charges. See Fla.Jud.Qual.Comm'n.R. 6(b). The judge has the right to make a statement before the Investigative Panel prior to the filing of charges. See Fla.Jud.Qual.Comm'n.R. 6(b). The Investigative Panel may require a judge to meet with the panel in reference to matters that relate to the judges duties. See Fla.Jud.Qual.Comm'n.R. 6(c).

III. Effect of Proposed Changes:

The committee substitute is a joint resolution amending the Florida Constitution. This joint resolution adds language to Art. V, s. 12(a)(4), Fla. Const., to make JQC records and proceedings public upon a finding of no probable cause. This joint resolution allows the Legislature to exempt records and proceedings from the public record requirement by general law.

This joint resolution also removes Art. V, s. 12(f), Fla. Const., the implementing language for the JQC provisions of the constitution. The language is unnecessary.

If approved by the voters, this joint resolution has an effective date of July 1, 2003. This date provides for a legislative session after the resolution is adopted to allow the Legislature to consider what, if any, exemptions to the public records requirement might be appropriate.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

A constitutional amendment may be proposed through a joint resolution of the Legislature. *See* Art. XI, s. 1, *Fla. Const.* The joint resolution requires three-fifths vote for passage in each house. A simple majority vote is required for passage in a committee. If the joint resolution is passed in this session, the proposed amendment would be placed on the ballot in the 2002 general election. *See* Art. XI, s. 5, *Fla. Const.* The proposed amendment or revision and the date of the election must be published in a newspaper of general circulation in each county before the election is held: once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Pursuant to Florida Bar Rule 3-7.1(k), the records from any disciplinary case against an attorney that concludes in a finding of no probable cause for further disciplinary proceedings will become public information. Rule 3-7.1(a) limits public disclosure to information concerning the status of the proceedings and any information that is part of the public record. The public record includes the record before the grievance committee, before a referee or before the Supreme Court and any reports correspondence, papers, recordings and transcripts of hearing furnished to, served on, or received from the respondent or complainant.

When investigations conducted by the Commission on Ethics result in the dismissal of the complaint then a public report is issued and the complaint and all materials related to the complaint become a matter of public record. S. 112.324(2), F.S.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
