

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: SJR 1704

INTRODUCER: Senator Hays

SUBJECT: Judicial Qualifications Commission

DATE: April 7, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Maclure	JU	Favorable
2.	Naf	Roberts	GO	Pre-meeting
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The joint resolution amends provisions of the Florida Constitution relating to the Judicial Qualifications Commission, to require that upon the finding of probable cause and the filing of formal charges, a determination that formal charges will not be filed, or the entry of a stipulation or other settlement agreement before the investigative panel determines whether to file formal charges, all further proceedings before the Judicial Qualifications Commission shall be open to the public, and all records and materials of the commission relating to the complaint against the justice or judge shall be open to the public for inspection or copying. However, information that is otherwise confidential or exempt shall retain its status. The records and materials shall be accessible to the public regardless of whether they were received or created while the proceedings were confidential or open to the public.

The joint resolution requires the Judicial Qualifications Commission to notify the Speaker of the Florida House of Representatives of all complaints received or initiated, all investigations conducted, and all complaints dismissed, settled, or otherwise concluded.

This joint resolution also includes a ballot summary, and three contingent summaries, which outline the provisions of the joint resolution.

This joint resolution proposes an amendment to section 12, Article V of the Florida Constitution.

II. Present Situation:

Judicial Qualifications Commission

The Judicial Qualifications Commission is created under Article V, section 12, of the Florida Constitution. The Judicial Qualifications Commission is vested with jurisdiction to investigate and recommend to the Florida Supreme Court the discipline, including the removal from office, or any justice or judge whose conduct demonstrates a present unfitness to hold office or warrants discipline.¹ “For purposes of this section, discipline is defined as any or all of the following: reprimand, fine, suspension with or without pay, or lawyer discipline.”² The commission shall have jurisdiction over justices and judges regarding allegations that misconduct occurred before or during service as a justice or judge if a complaint is made no later than one year following service as a justice or judge.³

The Judicial Qualifications Commission is comprised of:

- Two judges from the district courts of appeal (selected by judges of the district courts of appeal);
- Two judges from the circuit courts (selected by judges of the circuit courts);
- Two judges from the county courts (selected by judges of the county courts);
- Four electors who are Florida residents and members of the Florida Bar (selected by the governing body of the Florida Bar); and
- Five electors who are Florida residents who have never held judicial office or been members of the Florida Bar and who are selected by the Governor.⁴

The members of the Judicial Qualifications Commission serve staggered terms not to exceed six years as prescribed by general law.⁵ No member of the Judicial Qualifications Commission shall hold office in a political party or participate in any campaign for judicial office or hold public office; provided that a judge may campaign for judicial office and hold that office.⁶ The commission shall elect one of its members as its chairperson.⁷

The Judicial Qualifications Commission is divided into an investigative panel and a hearing panel as established by rule of the commission.⁸ The investigative panel has jurisdiction to receive or initiate complaints, conduct investigations, dismiss complaints, and upon a vote of a simple majority of the panel submit formal charges to the hearing panel.⁹ The hearing panel has the authority to receive and hear formal charges from the investigative panel and upon a two-thirds vote of the panel recommend to the Florida Supreme Court the removal of a justice or judge or the involuntary retirement of a justice or judge for any permanent disability that seriously interferes with the performance of judicial duties.¹⁰ Upon a simple majority vote of the

¹ FLA. CONST. art. V, s. 12(a)(1).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ FLA. CONST. art. V, s. 12(a)(2).

⁶ *Id.*

⁷ *Id.*

⁸ FLA. CONST. art. V, s. 12(b).

⁹ *Id.*

¹⁰ *Id.*

membership of the hearing panel, the panel may recommend to the Florida Supreme Court that the justice or judge be subject to appropriate discipline.¹¹

Confidentiality of Proceedings of the Judicial Qualifications Commission

Until formal charges against a justice or judge are filed by the investigative panel with the clerk of the Supreme Court of Florida, all proceedings by or before the commission shall be confidential; provided, however, upon a finding of probable cause and the filing by the investigative panel with the clerk of the formal charges against a justice or judge, the charges and all further proceedings before the commission shall be public.¹²

The constitutional provisions authorizing the Judicial Qualifications Commission do not address the extent to which records related to a disciplinary investigation by the commission are subject to disclosure. However, the rules of the commission provide that “[a]ll notices, papers and pleadings mailed to a judge prior to formal charges being instituted shall be enclosed in a cover marked “confidential.””¹³ The rules further provide that:

(a) Upon the filing of the Notice of Formal Charges against a judge with the Clerk of the Supreme Court of Florida, the Notice of Formal Charges and all subsequent proceedings before the Hearing Panel shall be public.

(b) The original of all pleadings *subsequent to* the Notice of Formal Charges shall be filed with the Clerk of the Supreme Court of Florida, which office is designated by the Commission for receiving, docketing, filing and making such records available for public inspection.¹⁴

The commission’s rules also specify that – on request of the Speaker of the House of Representatives or the Governor – the commission shall make available all information in possession of the commission for use in consideration of impeachment or suspension, respectively.¹⁵

The Florida Supreme Court articulated a rationale for confidentiality of complaints concerning the judiciary in the following statement:

The purpose is to process complaints concerning the judiciary from any and all sources, while requiring confidentiality as a means to protect both

¹¹ *Id.*

¹² FLA. CONST. art. V, s. 12(a)(4). *Accord* ss. 456.073(10) and 455.225(10), F.S. (Providing that the complaint and all information obtained pursuant to a disciplinary complaint filed against a professional licensed by the Department of Health or Department of Business and Professional Regulation are confidential until 10 days after probable cause is found to exist by the probable cause panel, but if confidentiality is not waived, or probable cause is not found, the complaint and all information are not available to the public). *But see* s 106.25(7), F.S., under which sworn complaints and investigative reports filed under ch. 106, F.S., with the Elections Commission are confidential with specified exceptions that include, upon a determination of probable cause or no probable cause by the Elections Commission.

¹³ Fla. Jud. Qual. Comm’n Rule 23.

¹⁴ Fla. Jud. Qual. Comm’n Rule 10.

¹⁵ Fla. Jud. Qual. Comm’n Rule 6(e).

the complainant from possible recriminations and the judicial officer from unsubstantiated charges. Confidentiality is also necessary for the Commission to carry out its responsibility to make suitable recommendations concerning judicial personnel problems that affect court efficiency. Eliminating the confidentiality of these proceedings would also eliminate many sources of information and complaints received by the Commission not only from lay citizens and litigants but also from lawyers and judges within the system.¹⁶

Constitutional Amendments

Section 1, Article XI, of the Florida Constitution, authorizes the Legislature to propose constitutional amendments by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office, or at a special election held for that purpose.¹⁷ Section 5(e), Article XI, of the Florida Constitution requires 60-percent voter approval for a constitutional amendment to take effect. An approved amendment will be effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.¹⁸

III. Effect of Proposed Changes:

The joint resolution amends Art. V, s. 12(a)(4) of the Florida Constitution, relating to the Judicial Qualifications Commission, to require that upon the finding of probable cause and the filing of formal charges, a determination that formal charges will not be filed, or the entry of a stipulation or other settlement agreement before the investigative panel determines whether to file formal charges, all further proceedings before the Judicial Qualifications Commission shall be open to the public, and all records and materials of the commission relating to the complaint against the justice or judge shall be open to the public for inspection or copying. However, information that is otherwise confidential or exempt shall retain its status. The records and materials shall be accessible to the public regardless of whether they were received or created while the proceedings were confidential or open to the public.

The joint resolution also amends Art. V, s. 12(a)(5) of the Florida Constitution to require the Judicial Qualifications Commission to notify the Speaker of the Florida House of Representatives of all complaints received or initiated, all investigations conducted, and all complaints dismissed, settled, or otherwise concluded.

The joint resolution provides four different ballot summaries. The first ballot summary directs that it will be placed on the ballot, and each subsequent ballot summary provides that it will be placed on the ballot in the event that a court declares the preceding ballot summary defective and the decision of the court is not reversed. This feature appears to have the effect of allowing the proposed amendment to survive up to three successful challenges to the amendment for a defective ballot summary.

¹⁶ See *Forbes v. Earle*, 298 So. 2d 1, 4 (Fla. 1974).

¹⁷ FLA. CONST. art. XI, s. 5(a).

¹⁸ FLA. CONST. art. XI, s. 5(e).

Because the resolution does not specify an alternate date, if approved by the electors, the amendment will take effect on the first Tuesday after the first Monday in January following the election at which it is approved.¹⁹

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of State Division of Elections is required to publish the proposed constitutional amendment twice in a newspaper of general circulation in each county. The average cost per word to advertise an amendment is \$106.14 according to the department. If the joint resolution passes and the proposed constitutional amendment is placed on the ballot, the department will incur costs to advertise the proposed amendment.²⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁹ FLA. CONST. art. XI, s. 5(e).

²⁰ See, e.g., Fiscal Note on SJR 2 prepared by the Florida Department of State (January 4, 2011).

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
