

**STORAGE NAME:** h1981.jo.doc  
**DATE:** March 4, 2002

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
JUDICIAL OVERSIGHT  
ANALYSIS**

**BILL #:** HB 1981 (PCB JO 02-05)  
**RELATING TO:** Judicial Qualifications Commissions  
**SPONSOR(S):** Committee on Judicial Oversight and Representative Crow  
**TIED BILL(S):** None

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) JUDICIAL OVERSIGHT YEAS 9 NAYS 0
  - (2)
  - (3)
  - (4)
  - (5)
- 

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

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 JO 02-05 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 joint resolution appears to have no fiscal impact on state and local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. 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 discipline<sup>1</sup> 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(a), 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. The commission's rules may be repealed by general law enacted by a majority vote of each house of the legislature or by the Supreme Court, five members concurring. 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

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<sup>1</sup> "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.

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:

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).

There have been concerns expressed that breaches of confidentiality can lead to hearings before the JQC where judges are treated unfairly. See In re: Frank, 753 So. 2d 1228, 1241 (Fla. 2000)(rejecting Frank's claims that breaches of confidentiality prejudiced him in defending the charges). In a notice of formal charges in In re: Holder, Fla.Jud.Qual.Comm'n No. 01-303, the Investigative Panel asserts that a circuit court judge may have violated the code of judicial conduct by failing to disclose proceedings before the JQC investigative panel which occurred prior to the filing of formal charges. The Investigative Panel notes that members of the JQC had met with Judge Holder to discuss allegedly inappropriate conduct on at least two prior occasions. However, records relating to such meetings are not public under Art. V, s. 12, Fla. Const., since no formal charges had been filed, so the public would not be aware of such conduct if the judge were sitting for reelection.

C. EFFECT OF PROPOSED CHANGES:

PCB JO 02-05 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.

See "Other Comments" for further discussion.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

A mandates analysis is unnecessary to an analysis of a proposed constitutional amendment.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

A mandates analysis is unnecessary to an analysis of a proposed constitutional amendment.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

A mandates analysis is unnecessary to an analysis of a proposed constitutional amendment.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Art. XI, s. 1, Fla. Const., provides that a constitutional amendment may be proposed by joint resolution of the Legislature. Final passage in the House and Senate requires a three-fifths vote in each house, passage in a committee requires a simple majority vote. If the joint resolution is passed in this session, Art. XI, s. 5, Fla. Const., provides that that the proposed amendment would be placed before the electorate at the 2002 general election. Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published. If the proposed amendment or revision is approved by vote of the electors, it will be effective as an amendment to or revision of the constitution of the state on July 1, 2003.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

In a memorandum sent to the members of the House Committee on Judicial Oversight, the Honorable James R. Wolf, Chairman of the JQC and Judge of the First District Court of Appeal, argues that removing the confidentiality of portions of JQC records and proceedings would allow all complaints against the judiciary to be publicized even though the vast majority of complaints will prove to be unfounded, will have a chilling effect on lawyer's willingness to bring complaints to the JQC, and may hinder the ability of the JQC to conduct meaningful investigations.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Judicial Oversight considered this bill on February 12, 2002. The committee adopted an amendment to make all JQC records and proceedings open to the public unless exempted by general law. The bill, as amended, was voted unfavorably. A motion to reconsider and leave pending was adopted.

The Committee on Judicial Oversight reconsidered the bill on February 21, 2002. The committee adopted an amendment to make JQC proceedings and records public upon a finding of no probable

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cause unless exempted by general law and provided the revision to the constitution would be effective July 1, 2003 if approved by the voters. The joint resolution, as amended, was approved.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

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L. Michael Billmeier, Jr., J.D.

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Nathan L. Bond, J.D.