

RESOLUTION ANALYSIS

C.S.S.J.R. 27
By: Huffman
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The resolution sponsor has informed the committee that there is a need to adjust the membership of the State Commission on Judicial Conduct (SCJC) as well as to revise the authority of the SCJC and Texas Supreme Court to more effectively sanction judges for judicial misconduct. C.S.S.J.R. 27 proposes a constitutional amendment regarding the membership of the SCJC, the membership of the tribunal to review the SCJC's recommendations, and the authority of the SCJC, the tribunal, and the Texas Supreme Court to more effectively sanction judges and justices for judicial misconduct.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this resolution does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this resolution does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.J.R. 27 proposes an amendment to the Texas Constitution to revise the composition of the 13-member State Commission on Judicial Conduct (SCJC) as follows:

- removes the condition that the six members chosen or appointed by the Texas Supreme Court with the advice and consent of the senate be judges of certain courts and provides instead that the six members be any individuals appointed by the supreme court with the advice and consent of the senate;
- removes the two members of the State Bar of Texas chosen by the board of directors of the state bar under regulations prescribed by the supreme court, with advice and consent of the senate; and
- revises the conditions on the five citizens appointed by the governor with the advice and consent of the senate by removing the condition that the citizens not be licensed to practice law nor hold any salaried public office or employment and by increasing the minimum age from 30 to 35 and increasing the number of citizens from five to seven.

The resolution replaces the prohibition against a judge or justice of an applicable court appointed to the SCJC from residing or holding a judgeship in the same court of appeals district as another member of the SCJC with a prohibition against a judge or justice appointed to the SCJC from being a judge or justice in the same type of court as another judge or justice who is a member of the SCJC.

C.S.S.J.R. 27 includes the supreme court among the entities to which a master appointed to hear and take evidence in a matter before the SCJC must report.

C.S.S.J.R. 27 revises provisions governing mandatory orders and actions by the SCJC on a finding of good cause, after a formal hearing or after considering the record and report of a master, as follows:

- specifies that good cause that triggers such orders or actions includes the person engaging in wilful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties;
- authorizes the SCJC, with respect to a judge or justice who has never been issued an order of public admonition, warning, reprimand, censure, or requirement to obtain additional training or education and in response to a complaint or report other than a complaint or report alleging the person engaged in conduct constituting a criminal offense, to issue an order of private admonition, warning, reprimand, censure, or requirement that the person obtain additional training or education;
- specifies that the requirement for the SCJC to issue an order of public admonition, warning, reprimand, censure, or requirement for training or education applies unless the SCJC is issuing an order of private admonition, warning, reprimand, censure, or requirement for training or education; and
- replaces the requirement for the SCJC to recommend to a review tribunal the removal or retirement of a judge or justice if the SCJC does not issue the orders for admonition, warning, reprimand, censure, or requirement for training or education, with an authorization for the SCJC to do so.

C.S.S.J.R. 27 revises provisions governing a tribunal to review the SCJC's recommendations for the removal or retirement of a justice or judge as follows:

- removes the specification that the method by which the seven justices who compose the review tribunal are selected by the chief justice of the supreme court is by lot and accordingly removes the requirement for each court of appeals to designate one of its members for inclusion in the list from which the selection is made;
- includes suspension without pay for a specified period among the sanctions the tribunal may order, as it finds just and proper, within 90 days after the date on which the record of the proceedings on the law and facts is filed with the review tribunal; and
- replaces the authorization for the tribunal, in an order for involuntary retirement for disability or an order for removal, to prohibit an applicable person from holding judicial office in the future with a requirement for the tribunal to do so.

C.S.S.J.R. 27 clarifies that, with respect to the authorization for the SCJC to recommend to the supreme court that a justice or judge be suspended from office for certain actions, the suspension may be with or without pay pending final disposition of the charge. The resolution removes the record of an appearance of a person against whom a complaint is filed before the SCJC from the subjects the supreme court must consider before suspending a person from office.

C.S.S.J.R. 27 takes effect January 1, 2026, and includes temporary provisions set to expire January 1, 2031, that do the following:

- set the terms of the SCJC commissioners serving before January 1, 2026, to expire December 31, 2025;
- require the supreme court, with the advice and consent of the senate, to appoint initial SCJC commissioners to serve staggered terms beginning January 1, 2026, as follows:
 - two commissioners to serve six-year terms;
 - two commissioners to serve four-year terms; and
 - two commissioners to serve two-year terms; and
- require the governor to appoint initial SCJC commissioners to serve staggered terms beginning January 1, 2026, as follows:
 - three commissioners to serve six-year terms;
 - two commissioners to serve four-year terms; and
 - two commissioners to serve two-year terms.

ELECTION DATE

The constitutional amendment proposed by this joint resolution will be submitted to the voters at an election to be held November 4, 2025.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.J.R. 27 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the resolution.

While the engrossed and substitute both revise the composition of the SCJC, the versions differ as follows:

- the engrossed replaced the condition that, of the four members chosen or appointed by the supreme court with advice and consent of the senate, one must be a justice of a court of appeals, one must be a district court judge, one must be a judge of a county court at law, and one must be a judge of a constitutional county court, with the condition that the four members may be a justice or judge of any such court, whereas the substitute does not replace that condition;
- the substitute instead removes the condition that all six members chosen or appointed by the supreme court, with advice and consent of the senate, be judges of certain courts, which the engrossed did not remove;
- the engrossed revised the conditions on the five citizens appointed by the governor with advice and consent of the senate by removing the condition that the citizens not be licensed to practice law, whereas the substitute does not make this revision; and
- the substitute instead revises the conditions on the five citizens by removing the condition that the citizens not be licensed to practice law nor hold any salaried public office or employment and increasing the minimum age from 30 to 35, whereas the engrossed did not make that revision.

The substitute omits the following provisions present in the engrossed:

- the prohibition against more than two of the seven citizens appointed by the governor from being licensed to practice law; and
- the requirement for a person licensed to practice law and appointed as one of those citizens to have practiced law for at least 10 consecutive years preceding the person's appointment.

The substitute includes the supreme court among the entities to which a master appointed to hear and take evidence in a matter before the SCJC must report, whereas the engrossed did not.

With respect to mandatory orders and actions by the SCJC on a finding of good cause after a formal hearing or after considering the record and report of a master, the substitute includes the following provisions absent from the engrossed:

- a specification that good cause that triggers such orders or actions includes the person engaging in wilful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties;
- an authorization for the SCJC, with respect to a judge or justice who has never been issued an order for public admonition, warning, reprimand, censure, or certain requirements and in response to a complaint or report other than a complaint or report alleging the person engaged in conduct constituting a criminal offense, to issue an order for private admonition, warning, reprimand, censure, or certain requirements;
- a specification that the requirement for the SCJC to issue orders for public admonition, warning, reprimand, censure, or certain requirements applies unless the SCJC is issuing an order for private admonition, warning, reprimand, censure, or certain requirements to an applicable judge or justice; and

- a replacement of the requirement for the SCJC to recommend to a review tribunal the removal or retirement of a person if the SCJC does not issue certain public or private orders with an authorization for the SCJC to do so.

The engrossed removed a private admonition warning, reprimand, or requirement that the person obtain additional training or education from the sanctions that the SCJC may issue at its discretion after an applicable investigation, whereas the substitute does not do so.

With respect to a tribunal that reviews the SCJC's recommendations for the removal or retirement of a justice or judge, the substitute does the following, which the engrossed did not do:

- removes the specification that the method by which the seven justices who compose the review tribunal are selected by the chief justice of the supreme court is by lot and accordingly removes the requirement for each court of appeals to designate one of its members for inclusion in the list from which the selection is made;
- includes suspension without pay for a specified period among the sanctions the tribunal may order, as it finds just and proper, within 90 days after the date on which the record of the proceedings on the law and facts is filed with the review tribunal; and
- replaces the authorization for the tribunal, in an order for involuntary retirement for disability or an order for removal, to prohibit an applicable person from holding judicial office in the future with a requirement for the tribunal to do so.

While the engrossed and substitute both clarify that, with respect to the authorization for the SCJC to recommend to the supreme court that a justice or judge be suspended from office for certain actions, that the suspension may be with or without pay, the substitute further clarifies that the suspension may be recommended pending final disposition of the charge, whereas the engrossed did not do so.

The substitute removes the record of an appearance of a person against whom a complaint is filed before the SCJC from the subjects the supreme court must consider before suspending a person from office, whereas the engrossed did not.

While the engrossed and substitute both include temporary provisions set to expire January 1, 2031, the versions differ as follows:

- the engrossed included a temporary provision requiring the commissioners of the SCJC serving on the date the resolution is approved by the voters as shown by the official canvass of returns to continue in office as the members of the SCJC under the former law that governed the composition of the SCJC, unless otherwise removed as provided by law, whereas the substitute does not;
- the engrossed included a temporary provision relating to the continuation of former law for that purpose, whereas the substitute does not;
- the engrossed included a temporary provision requiring new commissioners of the SCJC to be appointed as vacancies occur, whereas the substitute does not; and
- the substitute includes temporary provisions instead setting the terms of the commissioners of the SCJC serving before January 1, 2026, to expire December 31, 2025, and requiring the supreme court and the governor to appoint initial members to serve specified staggered terms beginning on January 1, 2026, whereas the engrossed did not.

The substitute revises the proposed ballot language as set out by the engrossed.