

BILL ANALYSIS

Senate Research Center

S.B. 209
By: Huffman; Nichols
Jurisprudence
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of the bill is to enact the recommendations of the Sunset Advisory Commission regarding the State Commission on Judicial Conduct (SCJC). The mission of SCJC is to protect the public from judicial misconduct; promote public confidence in the integrity, independence, competence, and impartiality of the judiciary; and encourage judges to maintain high standards of conduct both on and off the bench.

SCJC is subject to review but not abolishment under the Sunset Act. As a result of its review of SCJC, the Sunset Advisory Commission recommended review again in six years, along with several statutory modifications that are contained in this legislation.

SCJC is governed by Chapter 33 of the Government Code and Article V, Section 1-a of the Texas Constitution. This legislation addresses issues differently from current law by:

- authorizing SCJC, in conjunction with voter approval of a constitutional amendment, to use its full range of disciplinary actions following formal proceedings;
- authorizing a court of review to hear appeals of sanctions following formal proceedings, in the same manner as it hears appeals of censures;
- requiring SCJC to report to the Texas Supreme Court as needed on suggested changes to update SCJC's procedural rules;
- requiring SCJC to provide Sunset staff with access to observe its closed meetings and review its confidential records to ensure a complete and thorough evaluation of SCJC's activities;
- requiring SCJC to hold an annual public hearing to allow the public to offer input on the its mission and operations;
- requiring SCJC, after dismissing a complaint, to provide the individual who filed the complaint with the reason(s) in plain language why the allegation made in the complaint failed to meet the definition of judicial misconduct;
- maintaining in law the requirement for SCJC to distribute an annual report on its activities to protect the public from judicial misconduct;
- clarifying in statute that SCJC is a state agency for the administration of judicial discipline, and does not have the power and authority of a court; and
- requiring that SCJC be reviewed again in six years, then reverting back to a Sunset review every 12th year.

S.B. 209 amends current law relating to the functions and operation of the State Commission on Judicial Conduct.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 33.001(a)(7), Government Code, to redefine "formal proceedings."

SECTION 2. Amends Section 33.002, Government Code, by adding Subsection (a-1), as follows:

(a-1) Provides that the State Commission on Judicial Conduct (SCJC) is an agency of the judicial branch of state government and administers judicial discipline. Provides that SCJC does not have the power or authority of a court in this state.

SECTION 3. Amends Section 33.003, Government Code, as follows:

Sec. 33.003. SUNSET PROVISION. Provides that SCJC is subject to review under Chapter 325 (Texas Sunset Act), but is not abolished under that chapter. Requires SCJC to be reviewed during the period in which state agencies abolished in 2019, rather than 2001, and every 12th year after 2019, rather than 2001, are reviewed.

SECTION 4. Amends Section 33.005(a), Government Code, as follows:

(a) Requires SCJC, not later than December 1 of each year, to submit to the legislature a report for the preceding fiscal year ending August 31. Requires that the report be made in an electronic format only.

SECTION 5. Amends Subchapter A, Chapter 33, Government Code, by adding Section 33.0055, as follows:

Sec. 33.0055. PUBLIC MEETING. (a) Requires SCJC to in each even-numbered year hold a public hearing to consider comment from the public regarding SCJC's mission and operations. Requires that such comments be considered in a manner which does not compromise the confidentiality of matters considered by SCJC.

(b) Requires SCJC to provide notice of a public hearing under this section to the secretary of state (SOS). Requires SOS to post the notice on the Internet for at least seven days before the day of the hearing and provide members of the public access to view the notice in the manner specified by Section 551.044 (Exception to General Rule: Governmental Body with Statewide Jurisdiction) for notice of an open meeting.

SECTION 6. Amends Subchapter B, Chapter 33, Government Code, by adding Section 33.0322, as follows:

Sec. 33.0322. CONFIDENTIAL INFORMATION PROVIDED TO SUNSET ADVISORY COMMISSION. (a) Requires SCJC, notwithstanding Section 33.032 (Confidentiality of Papers, Records, and Proceedings) or other law, including Section 1-a(10) (relating to requiring that all papers filed with and proceedings before SCJC or a Master be confidential, unless otherwise provided by law, and requires that the filing of papers with, and the giving of testimony before SCJC or a Master be privileged, unless otherwise provided by law; and authorizing SCJC to issue a public statement through its executive director or its Chairman at any time during any of its proceedings under this section when sources other than SCJC cause notoriety concerning a Judge or SCJC and SCJC determines that the best interests of a Judge or of the public will be served by issuing the statement), Article V (Judicial Department), Texas Constitution, to provide to the Sunset Advisory Commission (Sunset) staff conducting a review under Chapter 325

(Texas Sunset Act) access to SCJC's confidential documents, records, meetings, and proceedings, including proceedings in which testimony is given, as the Sunset staff determines necessary to conduct a complete and thorough evaluation of SCJC's activities.

(b) Provides that the confidentiality provisions of this chapter and other law do not authorize SCJC to withhold from the Sunset staff access to any confidential document, record, meeting, or proceeding to which the Sunset staff determines access is necessary for a review under Chapter 325 (Texas Sunset Act).

(c) Requires the Sunset staff to maintain the confidentiality SCJC is required to maintain under this chapter and other law for each document, record, meeting, or proceeding that the staff accesses or receives as part of a review under Chapter 325 (Texas Sunset Act).

(d) Provides that SCJC does not violate the attorney-client privilege, or any other privilege or confidentiality requirement protected or required by the Texas Constitution, common law, statutory law, or rules of evidence, procedure, or professional conduct, by providing to the Sunset staff for purposes of a review under Chapter 325 (Texas Sunset Act) a confidential communication, including a document or record or any testimony or other information presented in a closed meeting or proceeding of SCJC, that is made between SCJC and its attorneys or other employees assisting SCJC in its decision-making process.

SECTION 7. Amends Section 33.033(e), Government Code, as follows:

(e) Requires SCJC, if the complaint is dismissed by SCJC, to include certain information in the notification under Subsection (a) (relating to requiring SCJC to promptly notify a complainant of the disposition of the case), including an explanation of each reason for the dismissal, including, as applicable, in plain, easily understandable language, each reason the conduct alleged in the complaint did not constitute judicial misconduct.

SECTION 8. Amends Sections 33.034(a), (e), (f), and (g), Government Code, as follows:

(a) Entitles a judge who receives from SCJC a sanction or censure issued by SCJC under Section 1-a(8) (relating to authorizing SCJC, after such investigation as it deems necessary, in its discretion, to issue a private or public admonition, warning, reprimand, or requirement that the person obtain additional training or education, or if SCJC determines that the situation merits such action, to institute formal proceedings and order a formal hearing to be held before it concerning the public censure, removal, or retirement of a person holding an office or position specified in Subsection (6) of this Section, or in its discretion request the Supreme Court to appoint an active or retired District Judge or Justice of a Court of Appeals, or retired Judge or Justice of the Court of Criminal Appeals or the Supreme Court, as a Master to hear and take evidence in any such matter, and to report thereon to SCJC), Article V, Texas Constitution, or any other type of sanction to a review of SCJC's decision as provided by this section. Provides that this section does not apply to a decision by SCJC to institute formal proceedings. Deletes existing text entitling a judge who receives from SCJC any type of sanction, or a censure issued by SCJC under Section 1-a(8), Article V, Texas Constitution, to a review of SCJC's decision as provided by this section.

(e) Provides that the review by the court under this section:

(1) of a sanction or censure issued in a formal proceeding is a review of the record of the proceedings that resulted in the sanction or censure and is based on the law and facts that were presented in the proceedings and any additional evidence that the court in its discretion may, for good cause shown, permit; and

(2) of a sanction issued in an informal proceeding is by trial de novo as that term is used in the appeal of cases from justice to county court.

(f) Provides that the procedure for the review of a sanction issued in an informal proceeding is governed to the extent practicable by the rules of law, evidence, and procedure that apply to the trial of civil actions generally, except as otherwise provided by this section.

(g) Provides that a judge is not entitled to a trial by jury in a review under this section of a sanction issued in an informal proceeding, rather than providing that a judge is not entitled to a trial by jury in a review of a sanction under this section.

SECTION 9. Amends Subchapter B, Chapter 33, Government Code, by adding Section 33.039, as follows:

Sec. 33.039. REVIEW OF COMMISSION OPERATIONS AND PROCEDURAL RULES. Requires SCJC periodically as SCJC determines appropriate to:

(1) assess the operations of SCJC and implement any improvements needed to increase efficiency; and

(2) review SCJC's procedural rules adopted by the Texas Supreme Court (supreme court) to determine whether rule amendments are necessary to reflect changes in law, including changes made through court opinions and statutory and constitutional amendments, and report to the supreme court the needed rule revisions and suggested language for those revisions.

SECTION 10. Requires SCJC, as soon as possible after the effective date of this Act, but not later than December 31, 2013, to conduct an initial assessment of the operations of SCJC and an initial review of the procedural rules as required by Section 33.039, Government Code, as added by this Act and report to the supreme court any needed rule revisions and suggested language for those revisions as required by that section.

SECTION 11. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2013.

(b) Effective date, Sections 33.001(a)(7) and 33.034, Government Code, as amended by this Act: contingent upon approval by the voters of the constitutional amendment relating to the sanctions that may be assessed against a judge or justice following a formal proceeding instituted by SCJC.