

SUBJECT: Increasing the membership of the State Commission on Judicial Conduct

COMMITTEE: Judiciary — committee substitute recommended

VOTE: 8 ayes — Hartnett, Hughes, Alonzo, Gonzales, Keel, Solis, Straus, Van Arsdale

0 nays

1 absent — Hopson

WITNESSES: For — None

Against — None

On — Seana Willing, State Commission on Judicial Conduct

BACKGROUND: Texas Constitution, Art. 5, sec. 1-a(2) authorizes the State Commission on Judicial Conduct (SCJC), which consists of 11 members appointed by the Texas Supreme Court, the State Bar of Texas, and the governor. Membership includes one appeals court justice, one district judge, two State Bar members, one justice of the peace, one municipal court judge, one county court judge, and four citizens. Currently, the justice of the peace, the municipal judge, and the county court judge are appointed at large. The remaining eight commissioners must not reside or hold a judgeship in the same supreme judicial district as another commissioner. A quorum of the membership consists of six members.

The agency's constitutional mandate is to investigate and to take appropriate action when it finds judicial misconduct or judicial incapacity. Such action may include discipline, education, censure, or the filing of formal procedures that could result in removal from office. There are about 3,300 judges and judicial officers under the jurisdiction of the SCJC.

DIGEST: CSHJR 87 would amend the Texas Constitution to increase the number of SCJC members from 11 to 13. The number of members appointed at-large would increase from three to nine, but the appeals court judge, the district judge, and the two State Bar attorney members could not reside or hold a judgeship in the same court of appeals district as another commissioner.

One new member would be a judge of a statutory probate court and the other one would be a judge of a constitutional county court. The two additional members would be chosen by the Supreme Court with the advice and consent of the Senate. A quorum would consist of seven members, rather than six. Recommendations on retirement, censure, suspension, or removal of any justice or judge would require a vote of at least seven, not six members.

The proposal would be presented to the voters at an election on Tuesday, November 8, 2005. The ballot proposal would read: "The constitutional amendment to include a statutory probate court judge and a constitutional county judge on the membership of the State Commission on Judicial Conduct."

**SUPPORTERS
SAY:**

CSHJR 87 would restructure the SCJC to ensure the fairness of the commission's overview of the judiciary. The commission should be expanded to include a constitutional county court judge and a probate judge to give judge with those jurisdictions representation on the commission. County judges have unique duties, including civil and criminal jurisdiction. In addition to judicial functions, they also serve as the presiding officer of the commissioners court in the counties where they serve. The inclusion of a county judge would bring a unique and valuable perspective to the commission. This added background and experience would be well worth the small increase in costs that the agency easily could absorb into its existing budget.

It is not always easy to find qualified people to serve on boards and commissions. Finding enough interested individuals who fit the necessary profile would be easier if the geographic restriction were lifted.

**OPPONENTS
SAY:**

There is no data suggesting that there is a need to add to the membership of the commission. Adding two members would increase travel and other operating expenses, and likely would result in the ability of the commission to meet only four times a year, rather than six as it currently does.

Lifting the geographic restrictions could result in a loss of geographic diversity if a substantial portion of the commission members were appointed from one area. When a judge has a case pending before the commission, it is standard practice for a commission member from the

same city or county to recuse himself or herself. If the commission contained a number of members from the same area, it could make a quorum impossible if they all recused themselves. The current make-up of the commission better reflects that of the state and should not be changed.

NOTES:

The substitute differs from the original by increasing the membership of the committee by two and allowing a total of nine members to be selected at large. The substitute also would change the number that would constitute a quorum and the majority vote provision.

The companion, SJR 36 by Lindsay, was left pending in the Senate Jurisprudence Committee on April 20.

The fiscal note projects no significant fiscal implication to the state, but does estimate a cost of \$66,497 to publish the resolution and approximately \$5,000 per year in additional travel and operating expenses attributed to the new commission members.