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SENATE JOINT RESOLUTION NO. 27

Offered January 12, 2022

Prefiled January 11, 2022

Directing the Joint Legislative Audit and Review Commission to study the Judicial Inquiry and Review Commission. Report.

Patrons—Boysko; Delegates: Murphy, Reid, Shin and Subramanyam

Referred to Committee on Rules

WHEREAS, the Judicial Inquiry and Review Commission (the Commission) was established under the Virginia Constitution of 1971 to provide a system under which complaints made against justices and judges can be investigated and such justices and judges who have been found to have violated the Judicial Canons of Conduct can be disciplined; and

WHEREAS, the Commission is composed of seven members, including three judges, two attorneys, and two citizens elected to four-year terms by the General Assembly, and employs its own staff who are not subject to election or appointment; and

WHEREAS, informal or formal hearings may be held by the Commission, and members of the Commission may engage a judge in discussions of possible solutions to complaints of alleged conduct or impose supervisory periods or suspension during pending investigations or formal hearings; and

WHEREAS, disciplinary action, and all information collected during the investigation process, is confidential as provided by general law, excluding complaints filed against a judge in the Supreme Court of Virginia, evidence related to a judge and his private practice of law transmitted to a Virginia State Bar disciplinary committee, or evidence of alleged misconduct of any judge in the final year of the term to which he was elected transmitted to the Senate Committee on the Judiciary and the House Committee for Courts of Justice; and

WHEREAS, there is no specific timeframe established by the General Assembly or the rules of the Commission by which the complaints must be reviewed upon receipt, complainants must be notified when a complaint is dismissed, investigations must be completed, discipline must be imposed, or charges must be filed in the Supreme Court of Virginia; and

WHEREAS, in 2021, the Commission reported that 395 complaints were filed and 371 were dismissed for failure to fall within the jurisdiction of the Commission, state a violation of the Judicial Canons of Conduct, or conclude a breach of the Canons, and five complaints were dismissed despite the conclusion that there was a breach of the Canons; and

WHEREAS, when compared to the number of complaints filed yearly with the Commission, the instances where judges are formally disciplined by the Supreme Court of Virginia, or formal or informal disciplinary information is made public, are few and far between, leading to the public perception of inefficiency, potential bias, and a lack of judicial accountability and oversight; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Joint Legislative Audit and Review Commission be directed to study the Judicial Inquiry and Review Commission. All records, transcripts, papers, investigatory notes, files, and other documents shall be made available by the Judicial Inquiry and Review Commission to the staff of the Joint Legislative Audit and Review Commission.

In conducting its study, the Joint Legislative Audit and Review Commission shall (i) review general operations of the Judicial Inquiry and Review Commission, including (a) procedures and persons responsible for reviewing complaints received and determining whether to dismiss or investigate such complaints, (b) processes for determining whether to conduct informal or formal hearings, and (c) any informal or established rules used to determine disciplinary action imposed on a judge or justice; (ii) consider the requirements for election of members of the Judicial Inquiry and Review Commission and determine whether (a) the current number of members and (b) the qualifications of members elected, as specified in § 17.1-901 of the Code of Virginia, are adequate to ensure proper judicial oversight and accountability; (iii) identify areas of weakness and potential areas of improvement; (iv) research best practices for judicial accountability and discipline; (v) provide recommendations to increase transparency, eliminate actual or perceived bias, increase efficiency and establish deadlines or specific timeframes for resolving complaints, provide effective interventions prior to the need for disciplinary action, and establish rules surrounding the types of disciplinary actions taken and when to take specific disciplinary action; and (vi) keep confidential all records, transcripts, papers, investigatory notes, files, or other confidential information provided by the Judicial Inquiry and Review Commission to the Joint Legislative Audit and Review Commission.

Technical assistance shall be provided to the Joint Legislative Audit and Review Commission by the

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59 Judicial Inquiry and Review Commission and the Supreme Court of Virginia. All agencies of the
60 Commonwealth shall provide assistance to the Joint Legislative Audit and Review Commission for this
61 study, upon request.

62 The Joint Legislative Audit and Review Commission shall complete its meetings by November 30,
63 2022, and the chairman shall submit to the Division of Legislative Automated Systems an executive
64 summary of its findings and recommendations no later than the first day of the 2023 Regular Session of
65 the General Assembly. The executive summary shall state whether the Joint Legislative Audit and
66 Review Commission intends to submit to the General Assembly and the Governor a report of its
67 findings and recommendations for publication as a House or Senate document. The executive summary
68 and report shall be submitted as provided in the procedures of the Division of Legislative Automated
69 Systems for the processing of legislative documents and reports and shall be posted on the General
70 Assembly's website.