

SENATE BILL REPORT

SB 5696

As Reported By Senate Committee On:
Law & Justice, March 4, 1997
Ways & Means, March 10, 1997

Title: An act relating to the commission on judicial conduct.

Brief Description: Balancing the powers of the commission on judicial conduct.

Sponsors: Senators Roach, Swecker, Kline, Fairley, Schow, Oke, Anderson, Deccio, Zarelli, Morton, Sellar, McCaslin, Horn, Patterson, Hale, Johnson, Franklin, Rossi, Stevens and Hochstatter.

Brief History:

Committee Activity: Law & Justice: 3/4/97 [DPS, DNPS].
Ways & Means: 3/10/97 [DP2S, DNP].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5696 be substituted therefor, and the substitute bill do pass.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Goings, Hargrove, Haugen, Kline, Long, McCaslin, Stevens and Zarelli.

Minority Report: Do not pass substitute.

Signed by Senator Fairley.

Staff: David Johnson (786-7754)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5696 be substituted therefor, and the second substitute bill do pass.

Signed by Senators West, Chair; Deccio, Vice Chair; Strannigan, Vice Chair; Hochstatter, Long, McDonald, Roach, Rossi, Schow, Swecker and Zarelli.

Minority Report: Do not pass.

Signed by Senators Bauer, Fraser, Kohl, Loveland, Sheldon, Snyder, Spanel and Thibaudeau.

Staff: Bryon Moore (786-7726)

Background: The Commission on Judicial Conduct is created by Article IV, Sec. 31 of the state Constitution, which sets forth in some detail its powers and duties. Under that section, it exists as an independent agency of the judicial branch. The commission shall, to the

extent compliance does not conflict with the powers, duties and procedures specifically set forth in the Constitution, comply with laws of general application with respect to rule-making procedures, public notice and attendance at commission proceedings. The commission has the power to establish rules of procedure, including due process and the confidentiality of its proceedings. The Legislature is directed to provide for the compensation and terms of office of the members of the commission. The Legislature has enacted implementing legislation.

Summary of Second Substitute Bill: Any member of the commission is disqualified from participating in commission proceedings if he or she participates in the investigation or initial proceedings, or gains factual knowledge regarding an incident before the date the final complaint is served upon a judge or justice.

The commission must pay reasonable attorneys' fees and expenses incurred by any judge or justice incurred on account of any confidential disciplinary proceeding where the commission initiates contact with the judge or justice, in a public hearing, or related proceeding of the Supreme Court. The attorneys' fees paid by the commission may not exceed \$150 per hour. The total amount of attorneys' fees and expenses paid by the commission is limited to a total of \$50,000 per judge or justice in a disciplinary action conducted by the commission.

A judge or justice subject to investigation or hearing may summon and examine witnesses and compel discovery under the civil rules. He or she will also have full access to all files and records of the commission, and must be promptly provided copies of all documents requested notwithstanding any privilege. The commission may not, by rule, qualify or abrogate this right.

The commission members are subject to the Code of Judicial Conduct and held to the highest standards of the judiciary.

The commission has no rule-making power.

Second Substitute Bill Compared to Substitute Bill: The requirement that the commission pay attorney fees and expenses is limited to instances where the commission initiates contact with a judge or justice in a disciplinary action.

The provisions repealing the immunity from suit enjoyed by the commission, its employees, special counsel and masters, and the absolute privilege applying to statements made to the commission or its investigators in defamation actions are removed.

Substitute Bill Compared to Original Bill: The substitute tightens the language with respect to the disqualification of a member who participates in the initial stages of an investigation.

Appropriation: None.

Fiscal Note: Requested on March 11, 1997.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: It is essential to have fair process to protect the public, but which is also open to the judge under investigation. The current system is inquisitorial, not adversarial as it should be. With alternates for each member, there are sufficient people available to decide the investigative and the fact-finding functions. The commission rules are very unfair. They decide what they are going to turn over and what they will withhold. Subjects of investigations or hearings have no right to access to all information the commission has before it. There should be no lesser standards for commission members than for judges or courts. The current process does not allow a judge to adequately defend against charges.

Testimony Against: The commission can only enforce the judicial code, can't change it. The commission has found no way under the Constitution to break up into two panels, one to look at probable cause, the other to conduct the hearing. This is a constitutionally created independent judicial agency authorized by the people. This should not be changed by statute. The confidentiality of the proceedings is essential to protecting the public interest.

Testified: Senator Roach, prime sponsor (pro); Justice Richard Sanders (pro); Margo Keller, Chair, Commission on Judicial Conduct; Sherry Appleton (con).