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**SUBSTITUTE SENATE BILL 5696**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators Roach, Swecker, Kline, Fairley, Schow, Oke, Anderson, Deccio, Zarelli, Morton, Sellar, McCaslin, Horn, Patterson, Hale, Johnson, Franklin, Rossi, Stevens and Hochstatter)

Read first time 03/05/97.

1 AN ACT Relating to the commission on judicial conduct; amending RCW  
2 2.64.030, 2.64.050, 2.64.060, 2.64.096, 2.64.113, and 2.64.120;  
3 creating a new section; and repealing RCW 2.64.080.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds:

6 (a) Current law provides that the judicial conduct commission shall  
7 investigate, determine probable cause, prosecute, determine the merits  
8 of the allegation at public hearing, and then recommend a sanction to  
9 be imposed on a sitting judge or justice. This consolidation of  
10 function invites bias, or the perception of bias, on the part of the  
11 commission.

12 (b) Existing law allows the commission to act virtually without  
13 legal or ethical restraint and denies a person wrongfully injured by  
14 the commission any remedy or redress at law. A majority of the  
15 commission is not subject to the lawyers' Rules of Professional Conduct  
16 nor is it subject to the Code of Judicial Conduct that it purports to  
17 enforce against others.

18 (c) Under existing law the commission is fully funded by the  
19 legislature and is allowed, at public expense, to hire attorneys to

1 prosecute its allegations against judicial respondents. Judicial  
2 respondents, however, are denied representation at public expense and  
3 must rely upon scarce private resources to defend their position  
4 against the commission.

5 (d) Under existing law the commission can summon witnesses and  
6 compel the production of documents and otherwise conduct its  
7 investigation through state process without notice to the judge or  
8 justice who is the target of the investigation, without affording him  
9 or her an opportunity to participate in similar discovery activities,  
10 and without affording the judge or justice under investigation the  
11 right to prompt and full disclosure of either the fruits of the  
12 investigation or the secret proceedings undertaken against him or her  
13 by the commission.

14 (e) While neither authorized by Constitution nor statute, the  
15 commission has purported to exercise a rule-making power through  
16 publication in the Washington State Register of new and different  
17 substantive rules of conduct for the judiciary and judicial staff,  
18 e.g., the proposed chapter 292-11 WAC, than previously adopted by the  
19 Supreme Court.

20 (2) It is the intent of this act to:

21 (a) Prevent a commission member who has developed a preconceived  
22 notion of the facts of a particular case from involvement in a  
23 commission determination on the merits;

24 (b) Extend the same rights to a judge or justice as currently  
25 granted to the commission for reasonable attorney fees and expenses;

26 (c) Extend the same rights to a judge or justice as currently  
27 granted to the commission for summoning witnesses and compelling  
28 production and examination of documents;

29 (d) Provide full access and discovery of investigation-related  
30 materials to the judge or justice under investigation;

31 (e) Require the commission and its members to be responsible for  
32 their actions;

33 (f) Hold each commission member to the highest standards of the  
34 same Code of Judicial Conduct that they purport to administer;

35 (g) Codify the legal obligation of the commission to be subject to  
36 such rules as the Supreme Court may adopt.

37 **Sec. 2.** RCW 2.64.030 and 1981 c 268 s 4 are each amended to read  
38 as follows:

1 Commission membership shall terminate if a member ceases to hold  
2 the position that qualified him or her for appointment. Vacancies  
3 caused by disqualification or resignation shall be filled by the  
4 appointing authority for the remainder of the term. No person may  
5 serve more than two consecutive four-year terms. A person may be  
6 reappointed after a lapse of one year. A member, rather than his or  
7 her successor, shall continue to participate in any hearing in progress  
8 at the end of his or her term, or when the member ceases to hold the  
9 position that qualified him or her for appointment. The appointing  
10 authority shall appoint an alternate to serve during a member's  
11 temporary disability, disqualification, or inability to serve. No  
12 member may otherwise be removed from the commission before the end of  
13 his or her term except upon good cause found by the appointing  
14 authority. A commissioner who has personally participated in the  
15 investigation or initial proceedings, or who has gained factual  
16 knowledge from the investigation or initial proceedings, may not sit in  
17 judgment at any subsequent public hearing in the same case.

18 **Sec. 3.** RCW 2.64.050 and 1989 c 367 s 3 are each amended to read  
19 as follows:

20 The commission may employ personnel, including attorneys, and make  
21 any other expenditures necessary for the effective performance of its  
22 duties and the exercise of its powers and shall pay all reasonable  
23 attorneys' fees and expenses incurred by any judge or justice on  
24 account of an investigation or proceeding conducted by the commission.  
25 The commission may hire attorneys or others by personal service  
26 contract to conduct initial proceedings regarding a complaint against  
27 a judge or justice. Commission employees shall be exempt from the  
28 civil service law, chapter 41.06 RCW.

29 **Sec. 4.** RCW 2.64.060 and 1981 c 268 s 7 are each amended to read  
30 as follows:

31 Each member of the commission, and any special master appointed by  
32 the commission, may administer oaths. The commission and a judge or  
33 justice subject to a commission investigation or proceeding, or his or  
34 her attorney, may summon and examine witnesses and compel the  
35 production and examination of papers, books, accounts, documents,  
36 records, certificates, and other evidence for the determination of any  
37 issue before or the discharge of any duty of the commission under CR 26

1 through 37. The commission shall also issue subpoenas at the request  
2 and on behalf of any judge or justice under inquiry. All subpoenas  
3 shall be signed by a member of the commission, the judge or justice who  
4 is the subject of the investigation or proceeding, or his or her  
5 attorney, or a special master appointed by the commission. Subpoenas  
6 shall be served and witnesses reimbursed in the manner provided in  
7 civil cases in superior court.

8 **Sec. 5.** RCW 2.64.096 and 1989 c 367 s 10 are each amended to read  
9 as follows:

10 ~~((Whenever the commission determines that there is probable cause~~  
11 ~~to believe that a judge or justice has violated a rule of judicial~~  
12 ~~conduct or that the judge or justice suffers from a disability which is~~  
13 ~~permanent or likely to become permanent and which seriously interferes~~  
14 ~~with the performance of judicial duties, the commission shall disclose~~  
15 ~~to the judge or justice any material or information within the~~  
16 ~~commission's knowledge which tends to negate the determination of the~~  
17 ~~commission, except as otherwise provided by a protective order.)) A  
18 judge or justice subject to an investigation or proceeding by the  
19 commission has full access to all files and records of the commission,  
20 its staff, its agents, and attorneys at all times and must be promptly  
21 provided with copies of all documents he or she may request pertaining  
22 to an investigation or proceeding to which he or she may be personally  
23 subject without the defense of privilege.~~

24 **Sec. 6.** RCW 2.64.113 and 1989 c 367 s 9 are each amended to read  
25 as follows:

26 The commission shall provide by rule for confidentiality of its  
27 investigations and initial proceedings in accordance with Article IV,  
28 section 31 of the state Constitution. However, the commission has no  
29 authority to qualify or abrogate the requirements of RCW 2.64.096.

30 Any person violating a rule on confidentiality is subject to a  
31 proceeding for contempt in superior court.

32 **Sec. 7.** RCW 2.64.120 and 1981 c 268 s 13 are each amended to read  
33 as follows:

34 The commission shall for all purposes be considered an independent  
35 part of the judicial branch of government subject to such rules as the  
36 supreme court adopts. Each commission member is subject to the Code of

1 Judicial Conduct and shall be held to the highest standards of the  
2 judiciary. The supreme court or its designee shall enforce the code  
3 under such rules as the supreme court adopts. The commission has no  
4 rule-making power.

5 NEW SECTION. **Sec. 8.** RCW 2.64.080 and 1981 c 268 s 9 are each  
6 repealed.

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