
SECOND SUBSTITUTE SENATE BILL 5696

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Ways & Means (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 03/10/97.

1 AN ACT Relating to the commission on judicial conduct; amending RCW
2 2.64.030, 2.64.060, 2.64.096, 2.64.113, and 2.64.120; adding a new
3 section to chapter 2.64 RCW; and creating a new section.

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 can summon witnesses and
19 compel the production of documents and otherwise conduct its

1 investigation through state process without notice to the judge or
2 justice who is the target of the investigation, without affording him
3 or her an opportunity to participate in similar discovery activities,
4 and without affording the judge or justice under investigation the
5 right to prompt and full disclosure of either the fruits of the
6 investigation or the secret proceedings undertaken against him or her
7 by the commission.

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

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

15 (a) Prevent a commission member who has developed a preconceived
16 notion of the facts of a particular case from involvement in a
17 commission determination on the merits;

18 (b) Extend the same rights to a judge or justice as currently
19 granted to the commission for summoning witnesses and compelling
20 production and examination of documents;

21 (c) Provide full access and discovery of investigation-related
22 materials to the judge or justice under investigation;

23 (d) Hold each commission member to the highest standards of the
24 same Code of Judicial Conduct that they purport to administer; and

25 (e) Codify the legal obligation of the commission to be subject to
26 such rules as the Supreme Court may adopt.

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

29 Commission membership shall terminate if a member ceases to hold
30 the position that qualified him or her for appointment. Vacancies
31 caused by disqualification or resignation shall be filled by the
32 appointing authority for the remainder of the term. No person may
33 serve more than two consecutive four-year terms. A person may be
34 reappointed after a lapse of one year. A member, rather than his or
35 her successor, shall continue to participate in any hearing in progress
36 at the end of his or her term, or when the member ceases to hold the
37 position that qualified him or her for appointment. The appointing
38 authority shall appoint an alternate to serve during a member's

1 temporary disability, disqualification, or inability to serve. No
2 member may otherwise be removed from the commission before the end of
3 his or her term except upon good cause found by the appointing
4 authority. A commissioner who has personally participated in the
5 investigation or initial proceedings, or who has gained factual
6 knowledge from the investigation or initial proceedings, may not sit in
7 judgment at any subsequent public hearing in the same case.

8 **Sec. 3.** RCW 2.64.060 and 1981 c 268 s 7 are each amended to read
9 as follows:

10 Each member of the commission, and any special master appointed by
11 the commission, may administer oaths. The commission and a judge or
12 justice subject to a commission investigation or proceeding, or his or
13 her attorney, may summon and examine witnesses and compel the
14 production and examination of papers, books, accounts, documents,
15 records, certificates, and other evidence for the determination of any
16 issue before or the discharge of any duty of the commission under CR 26
17 through 37. The commission shall also issue subpoenas at the request
18 and on behalf of any judge or justice under inquiry. All subpoenas
19 shall be signed by a member of the commission, the judge or justice who
20 is the subject of the investigation or proceeding, or his or her
21 attorney, or a special master appointed by the commission. Subpoenas
22 shall be served and witnesses reimbursed in the manner provided in
23 civil cases in superior court.

24 **Sec. 4.** RCW 2.64.096 and 1989 c 367 s 10 are each amended to read
25 as follows:

26 ~~((Whenever the commission determines that there is probable cause~~
27 ~~to believe that a judge or justice has violated a rule of judicial~~
28 ~~conduct or that the judge or justice suffers from a disability which is~~
29 ~~permanent or likely to become permanent and which seriously interferes~~
30 ~~with the performance of judicial duties, the commission shall disclose~~
31 ~~to the judge or justice any material or information within the~~
32 ~~commission's knowledge which tends to negate the determination of the~~
33 ~~commission, except as otherwise provided by a protective order.)) A
34 judge or justice subject to an investigation or proceeding by the
35 commission has full access to all files and records of the commission,
36 its staff, its agents, and attorneys at all times and must be promptly
37 provided with copies of all documents he or she may request pertaining~~

1 to an investigation or proceeding to which he or she may be personally
2 subject without the defense of privilege.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 2.64 RCW
4 to read as follows:

5 The commission shall pay reasonable attorneys' fees and expenses
6 incurred by any judge or justice in any confidential disciplinary
7 proceeding where the commission initiates contact with the judge or
8 justice or in a public hearing under this chapter or related proceeding
9 of the supreme court. Attorneys' fees paid under this section shall
10 not exceed one hundred fifty dollars per hour. The total attorneys'
11 fees and expenses paid to a judge or justice in a disciplinary action
12 shall not exceed fifty thousand dollars.

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

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

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

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

23 The commission shall for all purposes be considered an independent
24 part of the judicial branch of government subject to such rules as the
25 supreme court adopts. Each commission member is subject to the Code of
26 Judicial Conduct and shall be held to the highest standards of the
27 judiciary. The supreme court or its designee shall enforce the code
28 under such rules as the supreme court adopts. The commission has no
29 rule-making power.

--- END ---