

SENATE BILL REPORT

SB 6255

As of January 26, 2016

Title: An act relating to judge impartiality.

Brief Description: Addressing judge impartiality.

Sponsors: Senators Sheldon, Rivers, Roach, Becker, Bailey, Miloscia, Warnick, Honeyford, Braun, Schoesler, O'Ban and Hewitt.

Brief History:

Committee Activity: Law & Justice: 1/21/16.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: The commission on judicial conduct is an independent part of the judicial branch of government. It was created by a constitutional amendment approved by the voters in November 1980. The mission of the commission is to protect the integrity of the judicial process and promote public confidence in the courts. The commission hears complaints on judicial misconduct and disability but does not act as an appellate court, reviewing judges' rulings. The commission may impose the following disciplinary actions in increasing severity: (1) admonishment; (2) reprimand; or (3) censure. The commission may also recommend that the Supreme Court suspend or remove a judge or justice.

Summary of Bill: The commission must discipline judges who fail to disqualify themselves in any proceeding where their impartiality is questioned because: (1) the judge knows or learns, in a timely motion, that a party, party's lawyer, or the law firm of the party's lawyer has within three years made an aggregate contribution to the judge's election in excess of \$50; or (2) when a party or lawyer who made a contribution in excess of \$50 appears in a case, the judge fails to disclose the contribution to the parties. The disclosure requirement continues from the beginning of the campaign until 180 days after the judge's election.

Appropriation: None.

Fiscal Note: Requested on January 19, 2016.

Committee/Commission/Task Force Created: No.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Effective Date: The bill takes effect on January 1, 2017.

Staff Summary of Public Testimony: PRO: The bill would allow the public to have confidence that courts are impartial and that judges hear cases with integrity. In a lawsuit, a judge would be required to disclose contributions to judge's election campaigns where one of the parties made those contributions. This will ensure that all parties are aware of any conflicts of interest. While judges are not supposed to know who contributes to their campaign, in practice the information is easily ascertained on the website of the Public Disclosure Commission. Ethics requires disclosure and transparency. The commission on judicial conduct should discipline judges who either fail to disclose these potential conflicts of interest, or discipline judges for not recusing themselves from cases where there is an actual conflict of interest due to political contributions to a judge's campaign. While the commission on judicial conduct has some general rules on conflicts, the bill would require the commission to adopt specific rules to improve the integrity of the courts.

CON: The bill would have an unintended effect of allowing parties to lawsuits to forum shop for the most favorable judge because a party could merely donate over the contribution limit in order to disqualify less favorable judges. If there were public financing for the elections of judges then it would be less likely that contributions would cause conflicts of interest. Also, another unintended effect is that persons who want to contribute to a judge's election would perhaps donate to a political action committee making independent expenditures instead of to a judge's campaign because they don't want that judge to be conflicted. When independent expenditures greatly exceed a judge's campaign expenditures, the candidates lose control of their election messaging.

OTHER: Courts will need to pay pro tem judges much more because other judges may not be available to take cases. The separation of powers doctrine does not allow the Legislature to require the commission on judicial conduct, part of the judicial branch, to adopt rules. There are provisions in the code that could allow the commission on judicial conduct to discipline judges for conflicts of interest.

Persons Testifying: PRO: Prime sponsor; Sen. Sheldon.

CON: Larry Shannon, WA State Association for Justice.

OTHER: Reiko Callner, Commission on Judicial Conduct.

Persons Signed In To Testify But Not Testifying: No one.