

# SENATE BILL REPORT

## SB 5876

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As of March 3, 2005

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

**Brief Description:** Modifying the judicial conduct commission.

**Sponsors:** Senators Honeyford, Rockefeller, Esser, Carrell, Johnson, McCaslin and Hargrove.

**Brief History:**

**Committee Activity:** Judiciary: 3/2/05.

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### SENATE COMMITTEE ON JUDICIARY

**Staff:** Cindy Fazio (786-7405)

**Background:** The authority of the Judicial Conduct Commission to impose disciplinary action against a judge for misconduct, and the manner in which such proceedings are conducted, is substantially governed by Article IV, Section 31 of the Washington Constitution. Substitute Senate Joint Resolution No. 8202, passed by the Legislature in April of 1989, comprehensively revised Article IV, Section 31 to allow the Legislature, by law, to make the system for disciplining judges more open and accountable. The constitutional amendment generally provides for the formation of a Commission on Judicial Conduct. The Legislature establishes the membership of the commission, which is to include judges, attorneys, and nonattorneys. The commission is authorized to conduct hearings regarding complaints against a judge, and the commission may take disciplinary actions on its own, or make disciplinary or retirement recommendations to the Supreme Court. Finally, the legislature, by law, is to provide for rules of procedures and open meetings for the commission. The resolution was approved by the voters on November 7, 1989.

**Summary of Bill:** A commission member, or alternate, who participates in an investigation or initial contact that leads to a finding of probable cause, must not participate in further proceedings, including a public hearing, on that matter.

All discovery prior to a public hearing must be conducted pursuant to the rules of civil procedure. Documents involved in the investigation or analysis leading to a determination of probable cause are discoverable by the jurist who is subject to the commission's proceedings.

Records compiled or obtained during the course of an investigation or initial proceeding involving the discipline or retirement of a judge or justice are exempt from disclosure under the public disclosure act. However, the respondent jurist is entitled to disclosure of all commission records unless a superior court finds, beyond a reasonable doubt, that the public interest requires non-disclosure. When the commission makes a determination of probable cause, records of the initial investigation and initial commission proceeding are subject to the public disclosure act.

Pursuant to Washington's constitution, the commission's investigation and initial proceeding into whether probable cause exists for conducting a public hearing to deal with a complaint are confidential.

All members and alternates of the commission are subject to the code of judicial conduct.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Testimony For:** The Judicial Conduct Commission operates as judge, jury, and executioner. The commission should have two branches, investigative and adjudicatory. The existing alternates could serve as the investigative branch and the rest of the panel as the adjudicatory. This legislation changes the commission's rules and that is not unconstitutional. When members of the panel sit as judges, they should abide by the rules of judicial conduct.

**Testimony Against:** Washington chose the one-tier system for the commission after 42 other states chose it. Washington was the 50th state to chose a system; and had all the experiences of the other states to draw upon to make an informed decision. All other administrative law agencies in Washington use this system. The issue of splitting the panel into an investigative function and adjudicatory function has been considered before. The Attorney General's office has issued an opinion on the idea; finding that a divided panel was unconstitutional. The one-tier system protects the integrity of the judicial system by holding judges accountable and protecting the judiciary's independence. Weakening the system's confidentiality practices would lead to a loss of potential evidence because people would be less willing to speak to investigators during the initial investigation of a complaint. Finally, restructuring the system to a two-tiered system would be very expensive.

**Who Testified:** PRO: Senator Honeyford, prime sponsor.

CON: Barrie Althoff, Executive Director, Judicial Conduct Commission, Reiko Callner, Senior Investigator, Judicial Conduct Commission.