

SUBJECT: Continuation and functions of the State Commission on Judicial Conduct

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Lewis, Farrar, Farney, Hernandez Luna, Raymond, S. Thompson

0 nays

3 absent — Gooden, Hunter, K. King

SENATE VOTE: On final passage, April 23 — 31-0

WITNESSES: (*On companion bill, HB 1885*)
For — Randall Kelton, Rule of law radio listenership; Julie Oliver, Texas Coalition on Lawyer Accountability; Pamela Kinney

Against — None

On — Tom Cunningham, Judicial Conduct Commission; Erick Fajardo, Sunset Advisory Commission; Ken Magnuson; Seana Willing, State Commission on Judicial Conduct; (*Registered, but did not testify*: Ken Levine, Sunset Advisory Commission)

BACKGROUND: The State Commission on Judicial Conduct (commission) was created in 1965 and is responsible for ensuring that judges and justices comply with the standards of conduct established in the Texas Constitution and by the Supreme Court. Any changes to the commission's duties or responsibilities require a voter-approved constitutional amendment. The commission's duties are to:

- investigate complaints against Texas judges;
- issue private and public sanctions to judges who have committed judicial misconduct; and
- make recommendations for the removal or retirement of a judge based on misconduct or incapacity.

The 13-member commission is comprised of six judges appointed by the

Supreme Court of Texas, representing appellate, district, county court at law, constitutional county, justice of the peace, and municipal courts. There are also two non-judge attorneys appointed by the State Bar of Texas, and five citizen members appointed by the governor, who are neither attorneys nor judges.

DIGEST:

SB 209 would continue the State Commission on Judicial Conduct (commission) until 2019 and would review the commission every 12 years. The commission would be an agency of the state government's judicial branch and would administer judicial discipline but not have the power or authority of a court. The commission's annual report would be submitted electronically.

Public meetings. The commission would have to hold annual public hearings for input on the commission's mission and operations. The secretary of state would be notified about a hearing in order to publicly post an online meeting notice at least seven days before the hearing.

Confidentiality. When the Sunset Advisory Commission was conducting a review, the commission would have to provide the Sunset Advisory Commission with access to any confidential documents, records, meetings, proceedings, and testimonies that were deemed necessary to conduct a thorough evaluation. The commission would not be authorized under confidentiality provisions to withhold access to these documents. The Sunset Advisory Commission would have to maintain any necessary confidentiality as part of a review. The commission would not violate attorney-client privilege or any other form of privilege by providing the Sunset Advisory Commission with otherwise confidential documents.

Complaints and disciplinary actions. If a complaint were dismissed, the commission would have to provide a plain, easily understandable explanation about why a judge's action did not constitute judicial misconduct.

After a formal proceeding, the commission could issue a public sanction, in addition to issuing a public censure and requiring the removal or retirement of a judge. After a formal proceeding, a judge could appeal the decision in the manner as a censure: the court of review would need to evaluate the proceedings and allow the presentation of new evidence. After an informal proceeding, the appeal of a sanction would be by trial de novo, but a judge would not be entitled to a trial by jury.

Internal review. The commission would have to periodically assess the efficiency of its operations and implement any necessary improvements. It would review its procedural rules adopted by the Texas Supreme Court and report any necessary rule revisions. The commission would have to conduct an initial assessment of its operations and procedural rules, and report any necessary revisions to the Texas Supreme Court by December 31, 2013.

The bill would take effect on September 1, 2013, except that the provisions involving sanctions require a voter-approved constitutional amendment. If that amendment is not approved, those provisions would have no effect.

**SUPPORTERS
SAY:**

SB 209 would improve the efficacy and oversight of the State Commission on Judicial Conduct. If the constitutional amendment proposed in SJR 42 were approved by voters, the commission could use its full range of disciplinary actions after a formal proceeding. This would enhance the commission's ability to discipline judges and deter judicial misconduct.

SB 209 would improve oversight of the commission by requiring that the Sunset Advisory Commission have full access to confidential documents and records. By allowing the Sunset Advisory Commission to thoroughly review the commission's proceedings, the bill would increase transparency and ensure that judges were being held accountable for any misconduct.

The bill would not undermine the commission's immunity. The commission is statutorily granted absolute and unqualified immunity, and the language of the bill would not change that protection. Moreover, it is not the legislative intent to limit the commission's immunity.

The bill would eliminate confusion by clarifying that the commission did not have the power of a court. The commission was designed to be a regulatory agency serving a quasi-judicial function, similar to the administrative decisions of other agencies. This clarification would not limit the commission's disciplinary influence because it would not increase the chance that a judge would appeal the decision to a court. Moreover, other provisions of the bill strengthen the commission's ability to penalize judicial misconduct.

OPPONENTS
SAY:

SB 209 could undermine the commission's immunity by changing the nature of the agency. This would limit its ability to effectively discipline judges and leave the members of the commission vulnerable to civil liability. In addition to impeding the commission's fundamental duties, it would also make it harder to find people willing to serve on the commission.

The commission should have the power of a court. This authority would ensure that judges abided by and respected the commission's decisions. Without this power, the commission would have limited disciplinary influence.

OTHER
OPPONENTS
SAY:

SB 209 should do more to enhance the ability of the commission to discipline judges. The commission's process protects judges from public scrutiny and often fails to hold them accountable for judicial misconduct. The resolution should authorize the commission to bring criminal charges, if appropriate. It should also include stronger reporting requirements to reinforce the commission's authority.

NOTES:

SB 209 is the enabling legislation for by SJR 42 by Huffman, which would authorize a ballot measure proposing a constitutional amendment to allow the commission to issue any type of disciplinary order following a formal proceeding.