



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #405

### **Transfer Judicial Commission to the Supreme Court (Judicial Commission and Supreme Court)**

[LFB 2015-17 Budget Summary: Page 262, #2 and Page 425, #3]

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#### **CURRENT LAW**

The Judicial Commission investigates and prosecutes any possible misconduct or permanent disability of Wisconsin judges or court commissioners. The Commission includes nine members: (a) five nonlawyers nominated by the Governor with the advice and consent of the Senate; and (b) one Circuit Court judge, one Court of Appeals judge, and two members of the State Bar of Wisconsin, who are not judges or court commissioners, appointed by the Supreme Court. The Commission elects one of its members as chairperson.

#### **GOVERNOR**

Eliminate the Judicial Commission as a separately budgeted agency, and transfer funding and position authority to the Supreme Court. Funding would include \$301,300 GPR in 2015-16 and \$301,900 GPR in 2016-17 and 2.0 GPR positions annually. Rename the Supreme Court's Bar Examiners and Responsibility program to be Bar Examiners and Responsibility; Judicial Commission. Create a new biennial appropriation for general program operations of the Judicial Commission and payments related to contractual agreements for investigations, prosecutions, or both. Currently, the Commission has an annual appropriation for general program operations and a biennial appropriation for contractual agreements for investigations.

#### **DISCUSSION POINTS**

1. The bill would delete the Judicial Commission as an independent agency and transfer the Commission to the Supreme Court.
2. The Judicial Commission is a nine-member commission that investigates and

prosecutes allegations of misconduct or disability of Wisconsin judges and court commissioners. Staffing for the Judicial Commission includes an executive director and one staff member. According to its 2014 Annual Report, the Judicial Commission received 425 initial inquiries into judicial misconduct or disability in 2014, which resulted in 33 new requests for investigation (to determine whether or not to open an investigation), from which the Commission authorized six new investigations. According to the Report, "While the number of initial inquiries and requests for investigation received by the Commission has remained relatively constant over the past five years, the Commission has noted an increase in the number of complex and serious allegations. This has resulted in investigations that take considerable time and expense to complete." During 2014, the Commission completed 10 investigations, of which five were dismissed with no actions, four were dismissed with a letter of concern or warning, and one resulted in a judge resigning.

3. According to the Department of Administration: "Transferring the Judicial Commission to the Supreme Court is an administrative change. Moving the Commission to the Court could provide additional administrative resources and efficiencies to the Commission's operations. There are other similar regulatory functions currently within the Supreme Court, namely the Board of Bar Examiners and the Office of Lawyer Regulation." Examples the administration provided included assistance with fiscal services, budget preparation, and office operations as needed.

4. The consolidation of the Judicial Commission into the appropriations structure of the Supreme Court was not requested by either the Commission or the Supreme Court.

5. The Executive Director for the Judicial Commission submitted a letter to the Joint Committee on Finance Co-Chairs on February 24, 2015, stating:

"The Commission respectfully requests that the proposal regarding the modification to Commission's funding and position authority be removed because the proposed changes do not merely reflect an administrative change. Instead, the proposed changes entail a fundamental policy shift which eliminates the independence of the Judicial Commission while providing virtually no financial benefit to the State. The changes will negatively impact the state court system and impede the Judicial Commission in the performance of its duties...

While creating these difficulties for the Commission and the Supreme Court, the proposed changes do not appear to offer any benefit to the State of Wisconsin. They do not save the taxpayers of the State of Wisconsin any significant amount of money nor do they create any increased efficiencies in the administration of the Commission."

6. On March 2, 2015, in her remarks before the Joint Committee on Finance, the Chief Justice of the Supreme Court expressed concern regarding the transfer:

"The transfer would yield virtually no savings. No increased efficiencies to the Commission or the court system are apparent...The public must be assured of a fair, impartial, neutral and non-partisan judiciary. An independent Judicial Commission helps foster public confidence in the integrity of the Commission's review of the conduct of judicial officials."

7. In addition, Supreme Court Justice Annette Ziegler was quoted in the Milwaukee

Journal Sentinel (February 11, 2015): "I'm not convinced the Supreme Court budget is the best place for the Commission, with all due respect to the Governor. It looks like the Commission is under our authority and control when frankly it shouldn't be."

8. Further, on March 3, 2015, the Chair of the Committee of Chief Judges submitted an email regarding the committee's position of various provisions of the budget, stating: "We did not take a vote on the Judicial Commission issue...I believe there was strong, though not unanimous, support for restoring the Commission as an independent agency outside the direct control of the Supreme Court."

9. Given the concerns raised about the perception of independence of the Commission's work investigating complaints against judges and court commissioners if transferred to the Supreme Court, the Committee may wish to delete the provision, maintaining the Commission as a separate agency. Alternatively, the Committee may agree with the administration that the Supreme Court could provide additional administrative resources and efficiencies and wish to retain the recommendation to transfer of the Commission.

## **ALTERNATIVES**

1. Approve the Governor's recommendation to eliminate the Judicial Commission as a separately budgeted agency, and transfer funding and position authority to the Supreme Court.
2. Delete provision.

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