



1995 SENATE BILL 514

February 1, 1996 - Introduced by Senator ADELMAN. Referred to Committee on Judiciary.

1 **AN ACT to renumber** 757.85 (5); **to renumber and amend** 757.93 (3); **to amend**
2 757.87 (1) and 757.93 (1); and **to create** 757.85 (1) (c), 757.85 (5) (b), 757.93 (3)
3 (a) and (b) and 757.93 (5) of the statutes; **relating to:** access to records of the
4 judicial commission.

Analysis by the Legislative Reference Bureau

Under current law, the judicial commission has the authority to investigate allegations of misconduct or disability of a judge or court commissioner. All proceedings relating to the allegations are confidential before the filing of a petition or formal complaint with the supreme court unless the judge or court commissioner waives the right to confidentiality. Thus, there is no public access to information in possession of the judicial commission related to cases of possible misconduct or disability when the judicial commission fails to file a petition or formal complaint with the supreme court or to information obtained before the filing of a petition or formal complaint.

This bill requires the judicial commission to maintain a record of allegations of misconduct of a judge or court commissioner that the commission decides not to investigate, including the source and nature of the information received and the reason for not conducting an investigation. The bill also requires the commission to prepare and maintain a record of cases involving misconduct of a judge or court commissioner that are investigated but not filed as formal complaints. The record shall include the source and nature of the information received, the disposition of the case and the reasons supporting the disposition, as well as any written response prepared by the judge or court commissioner involved. The bill subjects these records and the materials acquired by the commission before the filing of a formal complaint of misconduct to the same public access as other public records.

Under current law, the person who provides information concerning possible misconduct or disability may request that the commission not disclose his or her

identity before the filing of a petition or formal complaint with the supreme court. The bill allows the person who provides information to request that the commission not disclose his or her identity before the record and related materials on the matter are public records.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 757.85 (1) (c) of the statutes is created to read:

2 757.85 (1) (c) If the commission or the executive director of the commission
3 receives information concerning the possible misconduct of a judge or court
4 commissioner and decides not to investigate the possible misconduct, the
5 commission or executive director shall prepare and maintain a record of the source
6 and nature of the information received and the reason for not conducting an
7 investigation.

8 **SECTION 2.** 757.85 (5) of the statutes is renumbered 757.85 (5) (a).

9 **SECTION 3.** 757.85 (5) (b) of the statutes is created to read:

10 757.85 (5) (b) If, following an investigation of possible misconduct, the
11 commission does not file a formal complaint with the supreme court, the commission
12 shall prepare and maintain a record of the source and nature of the information
13 received, the disposition of the case and the reasons supporting the disposition. The
14 judge or court commissioner who was the subject of the investigation shall have
15 opportunity to respond in writing and have the response made part of the record.

16 **SECTION 4.** 757.87 (1) of the statutes is amended to read:

17 757.87 (1) After the commission has found probable cause that a judge or court
18 commissioner has engaged in misconduct or has a permanent disability, and before
19 the commission files a formal complaint or a petition under s. 757.85 (5) (a), the

1 commission may, by a majority of its total membership not disqualified from voting,
2 request a jury hearing. If a jury is not requested, the matter shall be heard by a panel
3 constituted under sub. (3). The vote of each member on the question of a jury request
4 shall be recorded and shall be available for public inspection under s. 19.35 after the
5 formal complaint or the petition is filed.

6 **SECTION 5.** 757.93 (1) of the statutes is amended to read:

7 757.93 (1) (a) All Except as provided in sub. (3) (a) and (b), all proceedings
8 under ss. 757.81 to 757.99 relating to misconduct or permanent disability prior to the
9 filing of a petition or formal complaint by the commission are confidential unless a
10 judge or court commissioner waives the right to confidentiality in writing to the
11 commission. Any such waiver does not affect the confidentiality of the identity of a
12 person providing information under par. (b).

13 (b) Any person who provides information to the commission concerning
14 possible misconduct or permanent disability may request that the commission not
15 disclose his or her identity to the judge or court commissioner ~~prior to the filing of~~
16 ~~a petition or a formal complaint by the commission~~ before the record and related
17 materials on the matter in the possession of the commission are subject to public
18 access under sub. (3).

19 **SECTION 6.** 757.93 (3) of the statutes is renumbered 757.93 (3) (c) and amended
20 to read:

21 757.93 (3) (c) The petition or formal complaint filed under s. 757.85 by the
22 commission and all subsequent hearings thereon are public. After final disposition
23 of a matter for which a formal complaint has been filed, materials in the possession
24 of the commission related to the matter which were acquired before the formal
25 complaint was filed are subject to public access under ss. 19.32 to 19.39.

