



## Legislative Fiscal Bureau

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May 1, 2017

Joint Committee on Finance

Paper #395

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

[LFB 2017-19 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 non-lawyers 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. The Executive Director of the Commission is appointed by the Commission and is hired in the unclassified service.

#### **GOVERNOR**

Eliminate the Judicial Commission as a separately budgeted agency, and transfer administration, funding and position authority to the Supreme Court. Transferred funding amounts would be \$303,500 GPR in 2017-18 and \$304,100 GPR in 2018-19 and 2.0 GPR positions annually.

#### **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 2016 Annual Report, the "Commission reviews and investigates allegations. If it finds probable cause of judicial misconduct or disability, it initiates and prosecutes an action in the Supreme Court against the judge or court commissioner. The Commission itself does not adjudicate the matter. It does not hold formal hearings and cannot impose discipline on judges or court commissioners." The Judicial Commission received 410 initial inquiries into judicial misconduct or disability in 2016, which resulted in 35 new requests for investigation (to determine whether or not to open an investigation) from which the Commission authorized 12 new investigations. During 2016, the Commission completed seven investigations, of which five were dismissed with no actions and two were dismissed with a letter of concern or warning.

3. According to the Governor's Budget in Brief, the recommendation to transfer the Judicial Commission to the Supreme Court would be "to take advantage of administrative efficiencies."

4. The consolidation of the Judicial Commission under 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 March 16, 2017, outlining its position against the transfer, stating:

"Thirty-nine years ago, the legislature designated the Judicial Commission as an independent agency within the judicial branch of government in order to maintain the independence of its review of complaints against the judiciary, minimizing the potential for conflicts of interest with members of the judiciary.

The proposed budget degrades the independence of the Judicial Commission by transferring the budgeting and position authority over the Commission from the legislature to the Supreme Court.

...This proposal represents a return to the old system where some of the same judicial officials over whom the Commission has jurisdiction would have control over the Commission's funding.

Additionally, the proposal does not save Wisconsin taxpayers any money and does not create any administrative efficiencies for either agency.

If implemented, the proposed budgetary changes would create not only an appearance of impropriety, but also several conflicts of interest for both the Commission and the Court which do not currently exist. If enacted, the proposed changes are likely to result in the erosion of the public's confidence in the integrity of the Judicial Commission's review of complaints involving the Supreme Court. Likewise, the changes are liable to cause the public to question the reasoning behind any financial decisions made by the Court involving the Commission."

6. On March 28, 2017, in her remarks before the Joint Committee on Finance, the Chief Justice of the Supreme Court expressed concern regarding the transfer: "Transferring the Judicial Commission into the Supreme Court as a Supreme Court department creates the potential for conflicts of interest for the Court, and it does not save money."

7. In his 2015-17 budget, the Governor recommended a similar proposal, which would have transferred the funding, positions, and responsibilities of the Judicial Commission to the Supreme Court. The Joint Committee on Finance and the Legislature deleted the provision from the budget and maintained the Commission as a separate agency.

8. Given the concerns raised about the perception of independence of the Commission's work investigating complaints against judges and court commissions 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 and wish to approve 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.

ALT 1	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
<u>Judicial Commission</u>				
GPR	-\$607,600	- 2.00	\$0	0.00
<u>Supreme Court</u>				
GPR	\$607,600	2.00	\$0	0.00

2. Delete provision.

ALT 2	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
<u>Judicial Commission</u>				
GPR	\$0	0.00	\$607,600	2.00
<u>Supreme Court</u>				
GPR	\$0	0.00	-\$607,600	- 2.00

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