

BILL ANALYSIS

Senate Research Center
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S.B. 303
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DIGEST AND PURPOSE

The State Commission on Judicial Conduct (commission), created by a constitutional amendment in 1965, is a judicial agency whose major functions are investigating and taking action in cases of alleged judicial misconduct or the incapacity of judges and judicial officers. The commission was reviewed by the Sunset Advisory Commission (SAC), resulting in recommendations for several statutory modifications. As proposed, S.B. 303 makes statutory modifications recommended by SAC relating to confidentiality, training, public awareness of and participation in the complaint process, and other recommended areas.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 33.002, Government Code, by adding Subsection (c), to require appointments to the State Commission on Judicial Conduct (commission) to be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

SECTION 2. Amends Chapter 33A, Government Code, by adding Sections 33.0032, 33.0041-33.0046, and 33.007-33.009, as follows:

Sec. 33.0032. CONFLICT OF INTEREST. (a) Defines "Texas trade association."

(b) Prohibits a person from being a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provision of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if the person or person's spouse meets certain specific criteria.

(c) Prohibits a person from acting as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

Sec. 33.0041. REMOVAL OF COMMISSION MEMBER; NOTIFICATION PROCEDURES. Sets forth procedures required for the notification of the existence of a potential ground for removal of a committee member.

Sec. 33.0042. REQUIREMENTS FOR OFFICE OR EMPLOYMENT: INFORMATION. Requires the executive director or the executive director's designee to provide to members of the commission and to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter and Section 1-a (Retirement,

Censure, Removal, and Compensation of Justices and Judges; State Commission on Judicial Conduct; Procedure), Article V, Texas Constitution, including certain specific information.

Sec. 33.0043. COMMISSION MEMBER TRAINING. (a) Requires a person who is appointed to and qualifies for office as a member of the commission to complete a training program that complies with this section.

(b) Sets forth requirements for the content of the training program.

(c) Provides that a person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Sec. 33.0044. DIVISION OF RESPONSIBILITY. Requires the commission to develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and staff of the commission.

Sec. 33.0045. EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT. (a) Requires the executive director or the executive director's designee to prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) Sets forth information required to be included in the policy statement.

(c) Sets forth requirements for the policy statement.

Sec. 33.0046. STATE EMPLOYEE INCENTIVE PROGRAM: INFORMATION AND TRAINING. Requires the executive director or the executive director's designee to provide to agency employees information and training on the benefits and methods of participation in the state employee incentive program.

Sec. 33.007. DISTRIBUTION OF MATERIALS TO JUDGES AND THE PUBLIC. (a) Requires the commission to develop and distribute plain-language materials as described by this section to judges and the public.

(b) Sets forth information required to be included in the materials.

(c) Requires the materials to be provided in English and Spanish.

(d) Requires the commission to provide to each person filing a complaint with the commission the materials described by this section.

(e) Requires the commission to adopt a policy to effectively distribute materials as required by this section.

Sec. 33.008. PUBLICATION OF SANCTIONS. Requires the Texas Bar Journal to periodically publish sanctions and orders of additional education issued by the commission.

Sec. 33.009. JUDICIAL MISCONDUCT INFORMATION. Requires the commission to routinely provide to entities that provide education to judges information relating to judicial misconduct resulting in sanctions or orders to judicial misconduct resulting in sanctions or orders of additional education issued by the commission. Requires the commission to categorize the information by level of judge and type of misconduct.

SECTION 3. Amends Chapter 33B, Government Code, as follows:

SUBCHAPTER B. New heading: POWERS AND DUTIES

SECTION 4. Amends Chapter 33B, Government Code, by adding Section 33.0211, as follows:

Sec. 33.0211. COMPLAINTS. (a) Requires the commission to maintain a file on each written complaint filed with the commission. Sets forth information required to be included in the file.

(b) Requires the commission, at least quarterly until final disposition of the complaint, to notify the person filing the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

SECTION 5. Amends Section 33.022, Government Code, by amending Subsection (c) and adding Subsection (l), to authorize the commission, if, after conducting a preliminary investigation under this section, the commission does not determine that an allegation or appearance of misconduct or disability is unfounded or frivolous, to request the complainant to appear informally before the commission. Requires the commission to adopt a policy that provides procedures for hearing from judges and complainants appearing before the commission. Requires the policy to ensure the confidentiality of a complainant's identity as provided under Section 33.0321.

SECTION 6. Amends Section 33.032, Government Code, by amending Subsections (a) and (b) and adding Subsection (f), to provide that the papers filed with and proceedings before the commission, except as provided by Section 33.034 and Subsections (c), (d), (e), and (f), are confidential prior to the filing of formal charges, rather than prior to the convening of a formal hearing. Requires, if the commission issues an order suspending a judge who has been indicted for a criminal offense, the order, any withdrawal of the order, and all records and proceeding related to the suspension, to be public. Makes a conforming change.

SECTION 7. Amends Chapter 33B, Government Code, by adding Section 33.0321, as follows:

Sec. 33.0321. CONFIDENTIALITY OF COMPLAINANT'S IDENTITY. Authorizes the commission, on the request of a complainant, to keep the complainant's identity confidential.

SECTION 8. Amends Section 33.033, Government Code, by adding Subsection (e) to require the commission, if the complaint is dismissed by the commission, to include in the notification under Subsection (a) certain specific information.

SECTION 9. Amends Chapter 33B, Government code, by adding Sections 33.035 and 33.036, as follows:

Sec. 33.035. RECONSIDERATION OF COMPLAINT. (a) Authorizes a complainant to request reconsideration of a dismissed complaint if, not later than the 30th day after the date of the communication informing the complainant of the dismissal, the complainant provides additional evidence of misconduct committed by the judge.

(b) Requires the commission to deny a request for reconsideration if the complainant does not meet the requirements under Subsection (a). Requires the commission to notify the complainant of the denial in writing.

(c) Requires the commission to grant a request for reconsideration if the complainant meets the requirements under Subsection (a). Requires the commission, after granting a request, to vote to affirm the original decision to dismiss the complaint, or reopen the complaint.

(d) Requires the commission to notify the complainant of the results of the commission's vote under Subsection (c) in writing.

(e) Requires the commission to conduct a full investigation of a complaint reopened under Subsection (c). Requires the investigation to be conducted by commission staff who were not involved in the original investigation.

(f) Authorizes a complainant to request reconsideration of a dismissed complaint under this section only once.

Sec. 33.036. CERTAIN DISCLOSURE OF INFORMATION. (a) Authorizes the commission, to protect the public interest, to disclose information relating to an investigation or proceeding under this chapter to certain specific entities.

(b) Authorizes information to be disclosed under this section only to the extent necessary for the recipient of the information to perform an official duty or function.

SECTION 10. Amends Chapter 411F, Government Code, by adding Section 411.137, as follows:

Sec. 411.137. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: STATE COMMISSION ON JUDICIAL CONDUCT. (a) Provides that the committee is entitled to obtain from the Texas Department of Public Safety (department) criminal history record information maintained by the department that relates to a person who meets certain criteria.

(b) Provides that information received by the commission is confidential. Authorizes the information to be disseminated only in an investigation or proceeding conducted by the commission.

(c) Requires the commission to destroy criminal history record information obtained under this section promptly after a final determination is made in the matter for which the information was obtained.

SECTION 11. Repealer: Section 33.005(e) (relating to the commission's annual report to the legislature), Government Code.

SECTION 12. (a) Sets forth requirements for the commission pertaining to the development and adoption of policies relating to materials and to the adoption of policies relating to hearing procedures.

(b) Makes application of Section 33.032, Government Code, as amended by this Act, retroactive.

(c) Makes application of Section 33.036, Government Code, as added by this Act, retroactive.

(d) Makes application of Section 33.0043, Government Code, as added by this Act, prospective.

(e) Makes application of Sections 33.0211 and 33.033(e), Government Code, as added by this Act, prospective.

SECTION 13. Effective date: September 1, 2001.