

1-1 By: Jetton (Senate Sponsor - Huffman) H.B. No. 3452  
1-2 (In the Senate - Received from the House May 12, 2023;  
1-3 May 12, 2023, read first time and referred to Committee on  
1-4 Jurisprudence; May 21, 2023, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 3, Nays 2;  
1-6 May 21, 2023, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10		X		
1-11	X			
1-12		X		
1-13	X			

1-14 COMMITTEE SUBSTITUTE FOR H.B. No. 3452 By: Hughes

1-15 A BILL TO BE ENTITLED  
1-16 AN ACT

1-17 relating to the discipline of judges by the State Commission on  
1-18 Judicial Conduct and the legislature.

1-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-20 SECTION 1. Section 33.001(b), Government Code, is amended  
1-21 to read as follows:

1-22 (b) For purposes of Section 1-a, Article V, Texas  
1-23 Constitution, "wilful or persistent conduct that is clearly  
1-24 inconsistent with the proper performance of a judge's duties"  
1-25 includes:

1-26 (1) wilful, persistent, and unjustifiable failure to  
1-27 timely execute the business of the court, considering the quantity  
1-28 and complexity of the business;

1-29 (2) wilful violation of a provision of the Texas penal  
1-30 statutes or the Code of Judicial Conduct;

1-31 (3) persistent or wilful violation of the rules  
1-32 promulgated by the supreme court;

1-33 (4) incompetence in the performance of the duties of  
1-34 the office;

1-35 (5) failure to cooperate with the commission; ~~or~~

1-36 (6) violation of any provision of a voluntary  
1-37 agreement to resign from judicial office in lieu of disciplinary  
1-38 action by the commission; or

1-39 (7) persistent or wilful violation of Article 17.15,  
1-40 Code of Criminal Procedure.

1-41 SECTION 2. Section 33.0212, Government Code, is amended to  
1-42 read as follows:

1-43 Sec. 33.0212. REPORT AND RECOMMENDATIONS ON FILED  
1-44 COMPLAINTS. (a) As soon as practicable after a complaint is filed  
1-45 with the commission, commission staff shall conduct a preliminary  
1-46 investigation of the filed complaint and draft recommendations for  
1-47 commission action.

1-48 (a-1) On completion of the preliminary investigation and  
1-49 submission of recommendations under Subsection (a), commission  
1-50 staff shall provide to the judge who is the subject of the complaint  
1-51 written notice of:

1-52 (1) the complaint, the results of the preliminary  
1-53 investigation, and the commission staff's recommendations for  
1-54 commission action regarding the complaint; and

1-55 (2) the judge's right to attend each commission  
1-56 meeting at which the complaint is included in the report filed with  
1-57 the commission members under Subsection (a-2).

1-58 (a-2) Not later than the 10th business day before a  
1-59 scheduled commission meeting [~~120th day after the date a complaint~~  
1-60 is filed with the commission], commission staff shall prepare and

2-1 file with each member of the commission a report detailing:  
 2-2 (1) each complaint for which a preliminary  
 2-3 investigation has been conducted under Subsection (a) but for which  
 2-4 the investigation report has not been finalized under Subsection  
 2-5 (b);  
 2-6 (2) the results of the preliminary investigation of  
 2-7 the complaint; and  
 2-8 (3) the commission staff's recommendations for  
 2-9 commission action regarding the complaint.

2-10 (b) Not later than the 120th [90th] day following the date  
 2-11 of the first commission meeting at which a complaint is included in  
 2-12 the report filed with the commission under Subsection (a-2) [staff  
 2-13 files with the commission the report required by Subsection (a)],  
 2-14 the commission shall finalize the investigation report and  
 2-15 determine any action to be taken regarding the complaint,  
 2-16 including:

- 2-17 (1) a public sanction;
- 2-18 (2) a private sanction;
- 2-19 (3) a suspension;
- 2-20 (4) an order of education;
- 2-21 (5) an acceptance of resignation in lieu of
- 2-22 discipline;
- 2-23 (6) a dismissal; or
- 2-24 (7) an initiation of formal proceedings.

2-25 (b-1) After the commission meeting at which an  
 2-26 investigation report is finalized and an action is determined under  
 2-27 Subsection (b), the commission shall provide to the judge who is the  
 2-28 subject of a complaint:

- 2-29 (1) written notice of the action to be taken regarding  
 2-30 the complaint not more than five business days after the commission  
 2-31 meeting; and
- 2-32 (2) as the commission determines appropriate, notice  
 2-33 of the action to be taken published on the commission's Internet  
 2-34 website not more than seven business days after the commission  
 2-35 meeting.

2-36 (c) If, because of extenuating circumstances, the  
 2-37 commission [staff] is unable to finalize an investigation report  
 2-38 and determine the action to be taken regarding a complaint under  
 2-39 Subsection (b) [provide an investigation report and recommendation  
 2-40 to the commission] before the 120th day following the date of the  
 2-41 first [the complaint was filed with the] commission meeting at  
 2-42 which a complaint is included in the report filed with the  
 2-43 commission under Subsection (a-2), the commission may order an  
 2-44 extension [the staff shall notify the commission and propose the  
 2-45 number of days required for the commission and commission staff to  
 2-46 complete the investigation report and recommendations and finalize  
 2-47 the complaint. The staff may request an extension] of not more  
 2-48 than 240 [270] days from the date of the first [the complaint was  
 2-49 filed with the] commission meeting at which a complaint is included  
 2-50 in the report filed with the commission under Subsection  
 2-51 (a-2). [The commission shall finalize the complaint not later than  
 2-52 the 270th day following the date the complaint was filed with the  
 2-53 commission.]

2-54 (d) [The executive director may request that the  
 2-55 chairperson grant an additional 120 days to the time provided under  
 2-56 Subsection (c) for the commission and commission staff to complete  
 2-57 the investigation report and recommendations and finalize the  
 2-58 complaint.

2-59 [~~(e)~~] If the commission orders an extension of time under  
 2-60 Subsection (c) [~~chairperson grants additional time under~~  
 2-61 Subsection (d)], the commission must timely inform the legislature  
 2-62 of the extension. The commission may not disclose to the  
 2-63 legislature any confidential information regarding the complaint.

2-64 SECTION 3. Section 33.0213, Government Code, is amended to  
 2-65 read as follows:

2-66 Sec. 33.0213. NOTIFICATION OF LAW ENFORCEMENT AGENCY  
 2-67 INVESTIGATION. On notice by any law enforcement agency  
 2-68 investigating an action for which a complaint has been filed with  
 2-69 the commission, the commission:

3-1 (1) may place the commission's complaint file on hold  
3-2 and decline any further investigation that would jeopardize the law  
3-3 enforcement agency's investigation; or

3-4 (2) shall ~~the commission may~~ continue an  
3-5 investigation that would not jeopardize a law enforcement  
3-6 investigation regarding the conduct subject to the complaint and  
3-7 may issue a censure or sanction based on the complaint.

3-8 SECTION 4. Section 33.034(a), Government Code, is amended  
3-9 to read as follows:

3-10 (a) A judge who receives from the commission a public  
3-11 sanction or censure issued by the commission under Section 1-a(8),  
3-12 Article V, Texas Constitution, that makes the judge ineligible for  
3-13 assignment under Section 74.055 ~~or any other type of sanction~~ is  
3-14 entitled to a review of the commission's decision as provided by  
3-15 this section. This section does not apply to a decision by the  
3-16 commission to institute formal proceedings.

3-17 SECTION 5. Section 33.037, Government Code, is amended to  
3-18 read as follows:

3-19 Sec. 33.037. SUSPENSION FROM OFFICE ~~[PENDING APPEAL]~~. (a)  
3-20 If a judge who is convicted of a felony or a misdemeanor involving  
3-21 official misconduct appeals the conviction, the commission shall  
3-22 suspend the judge from office without pay pending final disposition  
3-23 of the appeal.

3-24 (b) If the commission initiates formal proceedings against  
3-25 a judge, the commission shall suspend the judge from office without  
3-26 pay not later than the 30th day after the date a special master is  
3-27 appointed and pending final disposition of the formal proceedings  
3-28 unless the special master determines the suspension is unwarranted.

3-29 (c) If the commission issues a public reprimand of a judge  
3-30 based on the judge's persistent or wilful violation of Article  
3-31 17.15, Code of Criminal Procedure, the commission shall:

3-32 (1) suspend the judge from office without pay for 60  
3-33 days; and

- 3-34 (2) send notice of the reprimand and suspension to:
  - 3-35 (A) the governor;
  - 3-36 (B) the lieutenant governor;
  - 3-37 (C) the speaker of the house of representatives;
  - 3-38 (D) the presiding officers of each legislative
  - 3-39 standing committee with jurisdiction over the judiciary;
  - 3-40 (E) the comptroller;
  - 3-41 (F) the chief justice of the supreme court;
  - 3-42 (G) the Office of Court Administration of the
  - 3-43 Texas Judicial System; and
  - 3-44 (H) the presiding judge of the administrative
  - 3-45 judicial region for the court served by the suspended judge.

3-46 SECTION 6. Section 74.055(c), Government Code, is amended  
3-47 to read as follows:

3-48 (c) To be eligible to be named on the list, a retired or  
3-49 former judge must:

3-50 (1) have served as an active judge for at least 96  
3-51 months in a district, statutory probate, statutory county, or  
3-52 appellate court;

3-53 (2) have developed substantial experience in the  
3-54 judge's area of specialty;

3-55 (3) not have been removed from office;

3-56 (4) certify under oath to the presiding judge, on a  
3-57 form prescribed by the state board of regional judges, that:

3-58 (A) the judge has never been either:

3-59 (i) publicly reprimanded or censured by the  
3-60 State Commission on Judicial Conduct; or

3-61 (ii) publicly reprimanded, sanctioned, or  
3-62 censured, or any combination of those punishments, more than once,  
3-63 unless the reprimand, sanction, or censure has been reviewed and  
3-64 rescinded by a special court of review under Section 33.034; and

3-65 (B) the judge:

3-66 (i) did not resign or retire from office  
3-67 after the State Commission on Judicial Conduct notified the judge  
3-68 of the commencement of a full investigation into an allegation or  
3-69 appearance of misconduct or disability of the judge as provided in

4-1 Section 33.022 and before the final disposition of that  
 4-2 investigation; or  
 4-3 (ii) if the judge did resign from office  
 4-4 under circumstances described by Subparagraph (i), was not publicly  
 4-5 reprimanded or censured as a result of the investigation;  
 4-6 (5) annually demonstrate that the judge has completed  
 4-7 in the past state fiscal year the educational requirements for  
 4-8 active district, statutory probate, and statutory county court  
 4-9 judges; and  
 4-10 (6) certify to the presiding judge a willingness not  
 4-11 to appear and plead as an attorney in any court in this state for a  
 4-12 period of two years.

4-13 SECTION 7. Section 665.052(b), Government Code, is amended  
 4-14 to read as follows:

- 4-15 (b) In this section, "incompetency" means:  
 4-16 (1) gross ignorance of official duties;  
 4-17 (2) gross carelessness in the discharge of official  
 4-18 duties; [~~or~~]  
 4-19 (3) inability or unfitness to discharge promptly and  
 4-20 properly official duties because of a serious physical or mental  
 4-21 defect that did not exist at the time of the officer's election; or  
 4-22 (4) persistent or wilful violation of Article 17.15,  
 4-23 Code of Criminal Procedure.

4-24 SECTION 8. As soon as practicable after the effective date  
 4-25 of this Act, the State Commission on Judicial Conduct shall adopt  
 4-26 rules to implement Section 33.001(b), Government Code, as amended  
 4-27 by this Act.

4-28 SECTION 9. Sections 33.001(b) and 665.052(b), Government  
 4-29 Code, as amended by this Act, apply only to an allegation of  
 4-30 judicial misconduct received by the State Commission on Judicial  
 4-31 Conduct or the legislature on or after the effective date of this  
 4-32 Act, regardless of whether the conduct or act that is the subject of  
 4-33 the allegation occurred or was committed before, on, or after the  
 4-34 effective date of this Act.

4-35 SECTION 10. Section 33.037, Government Code, as amended by  
 4-36 this Act, applies only to a special master appointed to hear a  
 4-37 formal proceeding on or after the effective date of this Act.

4-38 SECTION 11. A former or retired judge on a list maintained  
 4-39 by a presiding judge under Section 74.055(a), Government Code, who  
 4-40 is ineligible to be named on the list under Section 74.055(c),  
 4-41 Government Code, as amended by this Act, shall be struck from the  
 4-42 list on the effective date of this Act and may not be assigned to any  
 4-43 court on or after the effective date of this Act.

4-44 SECTION 12. This Act takes effect September 1, 2023.

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