

## BILL ANALYSIS

S.B. 209  
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Judiciary & Civil Jurisprudence  
Committee Report (Unamended)

### BACKGROUND AND PURPOSE

The State Commission on Judicial Conduct (Commission) was created in 1965 through a constitutional amendment, proposed by the 59th Legislature and approved by voters, to investigate allegations of judicial misconduct or judicial disability, and to discipline judges. The Commission's mission is to protect the public from judicial misconduct; promote public confidence in the integrity, independence, competence, and impartiality of the judiciary; and encourage judges to maintain high standards of conduct both on and off the bench.

The Commission on Judicial Conduct is subject to review but not abolishment under the Sunset Act. As a result of its review of the Commission, the Sunset Advisory Commission recommended review again in six years, along with several statutory modifications that are contained in this legislation.

### RULEMAKING AUTHORITY

The bill does not expressly grant rulemaking authority to a state officer, department, agency, or institution.

### ANALYSIS

***In conjunction with voter approval of a constitutional amendment, authorizes the Commission to use its full range of disciplinary actions following formal proceedings.***

S.B. 209 authorizes the Commission to issue a public admonition, warning, reprimand, or order of education following a formal proceeding, in addition to its current authority to issue a public censure or recommend removal or retirement of a judge or justice to a Review Tribunal. The bill provides for these changes to take effect on the date the constitutional amendment proposed by the 83rd Legislature, Regular Session, 2013, regarding this provision takes effect, and only if the voters approve the constitutional amendment.

***Authorizes a Court of Review to hear appeals of sanctions following formal proceedings, in the same manner as it hears appeals of censures.***

This bill requires the Court of Review to conduct a review of the record of the formal proceeding and to allow new evidence with good cause shown, as is currently done for censures; instead of by trial de novo as is currently done for appeals of sanctions issued in informal proceedings. The bill provides for these changes to take effect on the date the constitutional amendment regarding the authorization of the Commission to issue sanctions following a formal proceeding takes effect contingent upon voter approval.

***Requires the Commission to report to the Supreme Court as needed on suggested changes to update the Commission's procedural rules.***

The bill requires the Commission to study its procedural rules for needed updates to reflect changes in case law, statute, and the constitution, and to report these findings to the Supreme Court on an as-needed basis. The bill requires the Commission to assess needed updates to improve its operations or increase efficiency. The bill also requires the Commission to make its first assessment and report any needed revisions to the Supreme Court as soon as possible but no later than December 31, 2013.

***Requires the Commission to provide Sunset staff with access to observe its closed meetings and review its confidential records to ensure a complete and thorough evaluation of the Commission's activities.***

S.B. 209 clarifies that the Commission's confidentiality and privilege provisions do not authorize the Commission to withhold from the Sunset Advisory Commission staff access to any confidential document, record, meeting, or proceeding to which Sunset staff determines access is necessary for a review under the Texas Sunset Act. The bill clarifies that Sunset staff must maintain the same level of confidentiality as the staff of the Commission and, as a result, is entitled to access whatever components of the Commission's process Sunset staff deems necessary. The bill also clarifies that the sharing of confidential agency documents prepared by Commission staff attorneys to aid the Commission in reaching a decision does not constitute a violation of attorney-client privilege.

***Requires the Commission to hold an annual public hearing to allow the public to offer input on the Commission's mission and operations.***

S.B. 209 requires the Commission to hold an open public meeting at least once every year to seek public input on the Commission's mission and operations. The bill requires the Commission to provide notice of a public hearing to the secretary of state. The bill also requires the secretary of state to post the notice on the Internet for at least seven days before the hearing and to provide members of the public access to view the notice in the manner specified for an open meeting of a governmental body with statewide jurisdiction under Section 551.044 of the Open Meetings Act of the Government Code.

***Requires the Commission, after dismissing a complaint, to provide the individual who filed the complaint with the reason(s) in plain language why the allegation made in the complaint failed to meet the definition of judicial misconduct.***

The bill requires the Commission to include, in its notice that informs individuals that the Commission has dismissed their complaint, an explanation of each reason why the conduct alleged in the complaint failed to constitute judicial misconduct. The bill requires the Commission to provide this explanation in plain and easily understandable language.

***Clarifies in statute that the Commission is a state agency for the administration of judicial discipline, and does not have the power and authority of a court.***

S.B. 209 amends the Commission's enabling statute to state that the Commission does not have the power and authority of a court, but is instead a state agency within the judicial branch that administers judicial discipline.

***Maintains in law the requirement for the Commission to distribute an annual report on its activities to protect the public from judicial misconduct.***

This bill maintains the requirement in the Commission's enabling statute to report on its activities and sanctions in the preceding fiscal year and requires that the report be provided to the Legislature in an electronic format only.

***Requires the Commission to undergo a Sunset review in six years and every 12th year after that year.***

The bill makes a one-time change to provide for the next Sunset review to occur in six years, 2019. The bill also provides that, after 2019, the Commission reverts back to a periodic Sunset review every 12th year.

#### **EFFECTIVE DATE**

This bill takes effect September 1, 2013 except for the provisions regarding issuing sanctions following a formal proceeding and appealing such sanctions, which take effect the date the related constitutional amendment takes effect, if that amendment is approved by the voters.