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FISCAL IMPACT REPORT

ORIGINAL DATE 1/30/06

SPONSOR Park LAST UPDATED _____ HB 255

SHORT TITLE Judicial Standards Commission Subpoenas SB _____

ANALYST McSherry

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 255, "Judicial Standards Commission Subpoenas" proposes to amend section 34-10-2, NMSA 1978 "Judicial Standards Commission—Duties—Subpoena Power" to clarify the power of the Judicial Standards Commission to issue subpoenas to compel the attendance of witnesses and the production of any books, records, documents or other evidence relevant to an investigation or hearing.

FISCAL IMPLICATIONS

None known.

SIGNIFICANT ISSUES

According to AGO, the bill could create greater efficiency in the administrative function of the Commission as well as continue and support the autonomy of the body. AOC cites the Commission's subpoena authority as the subject of litigation in the state Supreme Court in a case entitled, "New Mexico, *ex rel.* New Mexico Judicial Standards Commission v. Judge Geraldine Rivera

and Randy M. Chavez, Real Party in Interest, (Case No. 29,239). OAG asserts that the Supreme Court issued an opinion upholding the Commission's authority.

AOC reports that this bill is consistent with the above listed Supreme Court decision which encouraged the Commission to promulgate rules to eliminate district courts from its subpoena process, similar to how the Disciplinary Bard subpoenas witnesses.

AGO reports that the power to issue subpoenas is consistent with the Commission's enabling law found in the state constitution Article VI, Section 32 of the New Mexico Constitution. The state constitution creates the "Judicial standards commission" and assigns it the task of investigating judicial misconduct and delineates the scope of its authority and requires confidentiality in its proceedings:

"The commission may, after investigation it deems necessary, order a hearing to be held before it concerning the discipline, removal or retirement of a justice, judge or magistrate, or the commission may appoint three masters who are justices or judges of courts of record to hear and take evidence in the matter and to report their findings to the commission. After hearing or after considering the record and the findings and report of the masters, if the commission finds good cause, it shall recommend to the Supreme Court the discipline, removal or retirement of the justice, judge or magistrate... All papers filed with the commission or its masters, and proceedings before the commission or its masters, are confidential. The filing of papers and giving of testimony before the commission or its masters is privileged in any action for defamation, except that the record filed by the commission in the supreme court continues privileged but, upon its filing, loses its confidential character, and a writing which was privileged prior to its filing with the commission or its masters does not lose its privilege by the filing.

. . . The commission shall promulgate regulations establishing procedures for hearings under this section. . . .

AGO points out that, as a constitutionally created agency, the Judicial Standards Commission was expressly empowered by the legislature with the role of acting as the investigative body in matters of judicial misconduct. See State v. Espinosa, 2003-NMSC-017, 134 N.M. 59, 73 P.3D 197 (2003).

This bill removes the requirement that the Commission petition a district court to subpoena witnesses and the production of documents

The bill proposes to remove the requirement that a concurrence of a majority of the members of the Commission to file a subpoena petition in district court. OAG asserts that the language of HB 255, as proposed, would not provide for whether the Commission itself would need a concurrence of a majority of the Commission to issue a subpoena.

The bill proposes to remove language requiring the showing of probable cause by the Commission for the issuance of a subpoena. It is unclear what standard the Commission will use to review subpoenas. AGO offers that, because attorneys are members of the Commission, as well as laypersons, the attorneys should determine and ensure the propriety of each subpoena issued by the Commission.

PERFORMANCE IMPLICATIONS

It is possible that the commission would be able to have hearings in a more efficient manner with the proposed changes, particularly the removal of the requirement for the commission to petition the district court and the requirement for a majority of the commission members

ADMINISTRATIVE IMPLICATIONS

According to AOC, a minimal reduction in court time and effort would result from the proposed statute changes.

OTHER SUBSTANTIVE ISSUES

AGO proposes that HB 255 would clarify the constitutionally established power of the Commission in a manner that will make the administrative function of the Commission more efficient, while assuring the Commission's independence.

AGO points out that the Commission was created to be an independent overseer of the state judiciary. According to AGO, the subpoena power provided by HB 255 will insure the proper administrative function of the Commission.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If House Bill 255 is not enacted, probable cause will still need to be shown in order for the Commission to petition a district court to issue subpoenas. The commission will continue to be required to gain concurrence of a majority of the members of the commission to petition a court to subpoenas.

POSSIBLE QUESTIONS

1. What will the commission's standard for reviewing subpoenas?
2. Would the commission have to have a majority concurrence in order to issue a subpoena if the requirement were removed to petition a district court?

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