Regular Session, 2012

SENATE BILL NO. 596

BY SENATOR KOSTELKA

EVIDENCE.  Provides an exemption from subpoena for judges and commissioners of Article V courts.  (gov sig)

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| 1 | AN ACT |
| 2 | To enact Code of Evidence Article 519, relative to testimonial privileges for judges in civil |
| 3 | and criminal cases; to prohibit the issuance of a subpoena requiring a judge to testify |
| 4 | in a civil, criminal, or juvenile proceeding without a hearing to determine privilege; |
| 5 | to provide for specific requirements regarding the information being sought through |
| 6 | the judge's testimony; to provide for a waiver for failure of a judge to timely object |
| 7 | to a subpoena; to extend privilege to any judge or commissioner provided for in the |
| 8 | constitution of Louisiana; and to provide for related matters. |
| 9 | Be it enacted by the Legislature of Louisiana: |
| 10 | Section 1.  Code of Evidence Article 519 is hereby enacted to read as follows: |
| 11 | **Art. 519.  Subpoena of judge or his representative in civil and criminal cases** |
| 12 | **A.  General Rule.  Neither a subpoena nor a court order shall be issued** |
| 13 | **to a judge or his representative to appear or testify in any civil, criminal, or** |
| 14 | **juvenile proceeding, including pretrial discovery or an administrative hearing,** |
| 15 | **unless, after a contradictory hearing, it has been determined that the** |
| 16 | **information sought is not protected from disclosure by the judicial deliberative** |
| 17 | **process privilege, and all of the following:** |

Coding: Words which are ~~struck through~~ are deletions from existing law;
words in **boldface type and underscored** are additions.

1     **(1) The information sought is essential to the case of the party seeking**

2     **the information and is not merely peripheral, cumulative, or speculative.**

3     **(2) The purpose of seeking the information is not to harass the judge, nor**

4     **for the mere purpose of seeking recusal of the judge.**

5     **(3) With respect to a subpoena, the subpoena lists the information sought**

6     **with particularity, is reasonably limited as to subject matter and period of time,**

7     **and gives timely notice.**

8     **(4) There is no practical alternative means of obtaining the information.**

9     **B. Waiver. Failure to object timely to a party's non-compliance with the**

10     **provisions of this Article constitutes a waiver of the procedural protections of**

11     **this Article, but does not constitute a waiver of any privilege.**

12     **C. The procedural provisions of and the protections afforded by**

13     **Paragraph A of this Article shall extend to any judge of any court provided for**

14     **by Article V of the Constitution of Louisiana and to any commissioner or special**

15     **master of such court.**

16     Section 2. This Act shall become effective upon signature by the governor or, if not

17     signed by the governor, upon expiration of the time for bills to become law without signature

18     by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

19     vetoed by the governor and subsequently approved by the legislature, this Act shall become

20     effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Alden A. Clement, Jr.

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### DIGEST

Proposed law prohibits the issuance of a subpoena or court order that requires a judge or his representative to appear or testify in any civil, criminal, or juvenile matter, including pretrial discovery or administrative hearing, without a contradictory hearing to determine if the information is protected from disclosure by the judicial deliberative process privilege.

Proposed law provides the following requirements to be determined in the contradictory hearing:

1.     The information sought is essential to the case of the party seeking the information and is not merely peripheral, cumulative, or speculative.

2.     The purpose of seeking the information is not to harass the judge, nor for the mere

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purpose of seeking recusal of the judge.

3.    With respect to a subpoena, the subpoena lists the information sought with
      particularity, is reasonably limited as to subject matter and period of time, and gives
      timely notice.

4.    There is no practical alternative means of obtaining the information.

Proposed law provides that failure to object timely to a party's non-compliance with the
provisions of proposed law constitutes a waiver of the procedural protections but does not
constitute a waiver of any privilege.

Proposed law provides that the procedural protections afforded by proposed law extend to
any judge of any court provided for by Article V of the La. Constitution and to any
commissioner or special master of such court.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds C.E. Art. 519)

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