

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 16-0248.01 Bob Lackner x4350

HOUSE BILL 16-1216

HOUSE SPONSORSHIP

McCann, Becker K., Court, Fields, Lee, Melton, Primavera, Salazar, Tyler

SENATE SPONSORSHIP

Steadman,

House Committees

Judiciary
Appropriations

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A BILL FOR AN ACT

101 CONCERNING MEASURES TO FACILITATE THE ADMINISTRATION OF THE
102 INDEPENDENT ETHICS COMMISSION, AND, IN CONNECTION
103 THEREWITH, MAKING AND REDUCING AN APPROPRIATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Sections 1 and 3 of the bill require the independent ethics commission (commission), created in article XXIX of the state constitution (article XXIX), to employ or retain independent legal counsel for the purpose of providing representation to the commission on all legal matters.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
May 6, 2016

HOUSE
Amended 2nd Reading
May 5, 2016

In connection with their existing statutory obligation to provide administrative rules, **section 2** requires the commission to adopt rules of conduct governing members of the commission relating to recusals in the case of personal conflicts of interest and restrictions on the involvement by members of the commission in political activity during their service on the commission. This section of the bill changes existing language authorizing the commission to employ staff into a requirement to employ staff. The staff of the commission is responsible for investigating and prosecuting complaints alleging violations of article XXIX that are subject to its jurisdiction.

Section 3 of the bill also provides procedures for the promulgation of administrative rules by the commission.

Section 4 of the bill adds definitions to the statutory code of ethics pertaining to article XXIX in connection with the changes made to the succeeding sections of the bill.

Section 5 of the bill amends the statutory code of ethics to specify the role of the commission and the general penalty imposed under article XXIX for a breach of public trust.

Sections 6 through 10 and 12 and 13 of the bill provide clarification, in the context of various existing statutory provisions imposing rules of conduct or public official disclosure obligations, that, in connection with a proceeding before the commission alleging a violation of a particular individual, the commission must find that the actor has breached his or her fiduciary duty and the public trust under the particular standard of proof the commission has determined is appropriate. These provisions are to be distinguished from provisions clarifying the standard of proof in connection with a proceeding for a violation of the particular section brought by a district attorney.

Section 11 of the bill clarifies that an advisory opinion issued by the board of ethics for the general assembly is not binding upon the commission in any proceeding brought before the commission and may not constitute a defense to any complaint before the commission.

Section 14 of the bill repeals existing statutory provisions pertaining to the acceptance of travel reimbursement from joint governmental agencies as well as the provisions creating the board of ethics for the executive branch.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 24-31-101, **amend**

3 (1) (a); and **add** (7) as follows:

4 **24-31-101. Powers and duties of attorney general.** (1) (a) The

1 attorney general of the state shall be the legal counsel and advisor of each
2 department, division, board, bureau, and agency of the state government
3 other than the legislative branch ~~He~~ AND THE INDEPENDENT ETHICS
4 COMMISSION CREATED IN SECTION 5 (1) OF ARTICLE XXIX OF THE STATE
5 CONSTITUTION. THE ATTORNEY GENERAL shall attend in person at the seat
6 of government during the session of the general assembly and term of the
7 supreme court and shall appear for the state and prosecute and defend all
8 actions and proceedings, civil and criminal, in which the state is a party
9 or is interested when required to do so by the governor, and ~~he~~ THE
10 ATTORNEY GENERAL shall prosecute and defend for the state all causes in
11 the appellate courts in which the state is a party or interested.

12 (7) IN ACCORDANCE WITH SECTION 24-18.5-102, INDEPENDENT
13 LEGAL COUNSEL SHALL PROVIDE LEGAL REPRESENTATION TO THE
14 INDEPENDENT ETHICS COMMISSION CREATED IN SECTION 5 (1) OF ARTICLE
15 XXIX OF THE STATE CONSTITUTION.

16

17 **SECTION 2.** In Colorado Revised Statutes, **add** 24-18.5-102 as
18 follows:

19 **24-18.5-102. Commission - retention or employment of**
20 **independent legal counsel - legislative declaration.** (1) (a) THE
21 GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT:

22 (I) IN 2006, THE VOTERS OF THE STATE APPROVED ARTICLE XXIX
23 OF THE STATE CONSTITUTION, THE CENTERPIECE OF WHICH IS AN
24 INDEPENDENT ETHICS COMMISSION;

25 (II) THE INDEPENDENT ETHICS COMMISSION WAS CREATED TO BE
26 INDEPENDENT OF THE OTHER BRANCHES OF GOVERNMENT AS IT
27 UNDERTAKES ITS DUTIES OF INTERPRETING AND IMPLEMENTING ARTICLE

1 XXIX AND OTHER STANDARDS OF CONDUCT AND REPORTING
2 REQUIREMENTS AS PROVIDED BY LAW;

3 (III) SINCE ITS CREATION IN 2006, LEGAL REPRESENTATION OF THE
4 INDEPENDENT ETHICS COMMISSION HAS BEEN PROVIDED BY THE ATTORNEY
5 GENERAL'S OFFICE; AND

6 (IV) HAVING LEGAL REPRESENTATION OF THE COMMISSION
7 PROVIDED BY A PUBLIC OFFICER AND GOVERNMENT EMPLOYEES IN THE
8 EXECUTIVE BRANCH WHO ARE SUBJECT TO THE COMMISSION'S
9 JURISDICTION IS CONTRARY TO THE CORE INDEPENDENCE OF THE
10 COMMISSION AND CREATES OPPORTUNITIES FOR APPEARANCES OF
11 IMPROPRIETY.

12 (b) BY ENACTING HOUSE BILL 16-1216, THE GENERAL ASSEMBLY
13 INTENDS, AMONG OTHER THINGS, TO EMPOWER THE INDEPENDENT ETHICS
14 COMMISSION TO RETAIN OR EMPLOY ITS OWN LEGAL COUNSEL AND
15 THEREBY BETTER FULFILL THE CORE CONSTITUTIONAL INDEPENDENCE
16 SOUGHT BY THE PEOPLE OF THE STATE IN ENACTING ARTICLE XXIX.

17 (2) THE COMMISSION SHALL EMPLOY OR RETAIN INDEPENDENT
18 LEGAL COUNSEL FOR THE PURPOSE OF PROVIDING THE COMMISSION
19 REPRESENTATION ON ALL LEGAL MATTERS INCLUDING, BUT NOT LIMITED
20 TO, PROVIDING LEGAL ADVICE TO THE COMMISSION UPON REQUEST BY ANY
21 OF ITS MEMBERS OR STAFF IN CONNECTION WITH PUBLIC BUSINESS OF THE
22 COMMISSION AND REPRESENTING THE COMMISSION IN COURT, BEFORE
23 OTHER PUBLIC BODIES, OR OTHERWISE IN CONNECTION WITH ANY ACTION
24 OR PROCEEDING IN WHICH THE COMMISSION HAS AN INTEREST OR TO
25 WHICH THE COMMISSION IS A PARTY.

26 [REDACTED]

27 **SECTION 3.** In Colorado Revised Statutes, 24-18-113, **amend**

1 (2) as follows:

2 **24-18-113. Board of ethics for the general assembly - created**
3 **- duties.** (2) The board of ethics for the general assembly shall, upon
4 written request of a member of the general assembly, issue advisory
5 opinions concerning issues relating to the requesting member's conduct
6 and the provisions of this article. ANY SUCH ADVISORY OPINION ISSUED BY
7 THE BOARD IS NOT BINDING UPON THE INDEPENDENT ETHICS COMMISSION
8 CREATED IN SECTION 5 (1) OF ARTICLE XXIX OF THE STATE CONSTITUTION
9 IN ANY PROCEEDING BROUGHT BEFORE THE COMMISSION AND MAY OR MAY
10 NOT CONSTITUTE A DEFENSE TO ANY COMPLAINT BEFORE THE
11 COMMISSION.

12 **SECTION 4.** In Colorado Revised Statutes, **repeal** 2-3-311 (2)
13 (d) and 24-18-112.

14 **SECTION 5. Appropriation - adjustments to 2016 long bill.**
15 (1) To implement this act, the general fund appropriation made in the
16 annual general appropriation act for the 2016-17 state fiscal year to the
17 judicial department for use by the independent ethics commission for the
18 purchase of legal services is decreased by \$171,090.

19 (2) To implement this act, appropriations made in the annual
20 general appropriation act for the 2016-17 state fiscal year to the
21 department of law are adjusted as follows:

22 (a) The appropriation from reappropriated funds transferred from
23 the judicial department for personal services related to legal services to
24 state agencies is decreased by \$153,981, and the related FTE is decreased
25 by 1.0 FTE; and

26 (b) The appropriation from reappropriated funds transferred from
27

1 the judicial department for operating expenses related to legal services to
2 state agencies is decreased by \$17,109.

3 (3) For the 2016-17 state fiscal year, \$130,368 is appropriated to
4 the judicial department for use by the independent ethics commission.
5 This appropriation is from the general fund and is based on the
6 assumption that the commission will require an additional 1.0 FTE. To
7 implement this act, the commission may use this appropriation for
8 program costs.

9 **SECTION 6. Effective date.** This act takes effect July 1, 2016.

10 **SECTION 7. Safety clause.** The general assembly hereby finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, and safety.