

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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

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House Committees

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A BILL FOR AN ACT

101 **CONCERNING MEASURES TO FACILITATE THE ADMINISTRATION OF THE**
102 **INDEPENDENT ETHICS COMMISSION.**

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.

In connection with their existing statutory obligation to provide

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.*

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
5 attorney general of the state shall be the legal counsel and advisor of each

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

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

15 **SECTION 2.** In Colorado Revised Statutes, 24-18.5-101, **amend**
16 (5) (a), (6), and (7); and **add** (1) (c) as follows:

17 **24-18.5-101. Independent ethics commission - establishment**
18 **- membership - subpoena power - definitions.** (1) As used in this
19 article, unless the context otherwise requires:

20 (c) "COVERED INDIVIDUAL" MEANS A PUBLIC OFFICER, MEMBER OF
21 THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR
22 GOVERNMENT EMPLOYEE AS THOSE TERMS ARE DEFINED IN SECTION 2 (1),
23 (3), AND (6) OF ARTICLE XXIX.

24 (5) (a) Subject to the provisions of paragraph (c) of this subsection
25 (5), IN CONNECTION WITH A COMPLAINT ALLEGING A VIOLATION OF
26 SECTION 3 (1) OR (2) OF ARTICLE XXIX, the commission shall dismiss as
27 frivolous any complaint filed under article XXIX that fails to allege that

1 a public officer, member of the general assembly, local government
2 official, or government employee has accepted or received any gift or
3 other thing of value for private gain or personal financial gain.

4 (6) Pursuant to the provisions of section 5 (1) of article XXIX, the
5 commission shall adopt reasonable rules as may be necessary for the
6 purpose of administering and enforcing the provisions of article XXIX
7 and any other standards of conduct and reporting requirements as
8 provided by law. ~~Any rules shall be promulgated in accordance with the~~
9 ~~requirements of article 4 of this title~~ SUCH RULES MUST INCLUDE RULES
10 OF CONDUCT GOVERNING MEMBERS OF THE COMMISSION RELATING TO,
11 WITHOUT LIMITATION, RECUSALS IN THE CASE OF A PERSONAL CONFLICT
12 OF INTEREST AND RESTRICTIONS ON THE INVOLVEMENT BY MEMBERS OF
13 THE COMMISSION IN POLITICAL ACTIVITY DURING THEIR SERVICE ON THE
14 COMMISSION. ANY RULES THAT THE COMMISSION IS REQUIRED TO
15 PROMULGATE TO SATISFY THE REQUIREMENTS OF THIS SUBSECTION (6), AS
16 AMENDED, MUST BE ADOPTED BY THE COMMISSION NOT LATER THAN ONE
17 HUNDRED EIGHTY DAYS FROM THE EFFECTIVE DATE OF THIS SUBSECTION
18 (6), AS AMENDED.

19 (7) Subject to available appropriations, the commission ~~may~~
20 SHALL employ such staff as ~~it deems~~ necessary to enable it to carry out its
21 functions in accordance with the requirements of this article and article
22 XXIX. THE STAFF OF THE COMMISSION IS RESPONSIBLE FOR
23 INVESTIGATING AND PROSECUTING COMPLAINTS ALLEGING VIOLATIONS OF
24 ARTICLE XXIX THAT ARE SUBJECT TO THE COMMISSION'S JURISDICTION IN
25 ACCORDANCE WITH SECTION 5 (3) (c) OF ARTICLE XXIX. THE
26 COMMISSION SHALL ORGANIZE ITS STAFF AND ADMINISTER ITS FUNCTIONS
27 SO THAT THE SAME ATTORNEY IS NOT PERFORMING THE SEPARATE

1 FUNCTIONS OF PROSECUTING A COMPLAINT AND ADVISING THE
2 COMMISSION WITH RESPECT TO ITS ADJUDICATION OF THE SAME OR A
3 RELATED COMPLAINT.

4 **SECTION 3.** In Colorado Revised Statutes, **add** 24-18.5-102 as
5 follows:

6 **24-18.5-102. Commission - independent legal counsel - powers**
7 **- retention - rule-making - legislative declaration.** (1) (a) THE

8 GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT:

9 (I) IN 2006, THE VOTERS OF THE STATE APPROVED ARTICLE XXIX
10 OF THE STATE CONSTITUTION, THE CENTERPIECE OF WHICH IS AN
11 INDEPENDENT ETHICS COMMISSION;

12 (II) THE INDEPENDENT ETHICS COMMISSION WAS CREATED TO BE
13 INDEPENDENT OF THE OTHER BRANCHES OF GOVERNMENT AS IT
14 UNDERTAKES ITS DUTIES OF INTERPRETING AND IMPLEMENTING ARTICLE
15 XXIX AND OTHER STANDARDS OF CONDUCT AND REPORTING
16 REQUIREMENTS AS PROVIDED BY LAW;

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

20 (IV) HAVING LEGAL REPRESENTATION OF THE COMMISSION
21 PROVIDED BY A PUBLIC OFFICER AND GOVERNMENT EMPLOYEES IN THE
22 EXECUTIVE BRANCH WHO ARE SUBJECT TO THE COMMISSION'S
23 JURISDICTION IS CONTRARY TO THE CORE INDEPENDENCE OF THE
24 COMMISSION AND CREATES OPPORTUNITIES FOR APPEARANCES OF
25 IMPROPRIETY.

26 (b) BY ENACTING HOUSE BILL 16-1216, THE GENERAL ASSEMBLY
27 INTENDS, AMONG OTHER THINGS, TO EMPOWER THE INDEPENDENT ETHICS

1 COMMISSION TO RETAIN OR EMPLOY ITS OWN LEGAL COUNSEL AND
2 THEREBY BETTER FULFILL THE CORE CONSTITUTIONAL INDEPENDENCE
3 SOUGHT BY THE PEOPLE OF THE STATE IN ENACTING ARTICLE XXIX.

4 (2) THE COMMISSION SHALL EMPLOY OR RETAIN INDEPENDENT
5 LEGAL COUNSEL FOR THE PURPOSE OF PROVIDING THE COMMISSION
6 REPRESENTATION ON ALL LEGAL MATTERS INCLUDING, BUT NOT LIMITED
7 TO, PROVIDING LEGAL ADVICE TO THE COMMISSION UPON REQUEST BY ANY
8 OF ITS MEMBERS OR STAFF IN CONNECTION WITH PUBLIC BUSINESS OF THE
9 COMMISSION AND REPRESENTING THE COMMISSION IN COURT, BEFORE
10 OTHER PUBLIC BODIES, OR OTHERWISE IN CONNECTION WITH ANY ACTION
11 OR PROCEEDING IN WHICH THE COMMISSION HAS AN INTEREST OR TO
12 WHICH THE COMMISSION IS A PARTY.

13 (3) (a) WHEN THE COMMISSION CONTEMPLATES MAKING RULES,
14 IT SHALL PROVIDE NOTICE OF PROPOSED RULE-MAKING, WHICH MUST BE
15 PUBLISHED IN THE COLORADO REGISTER. THE NOTICE MUST STATE:

16 (I) THE TIME, PLACE, AND PUBLIC MANNER OF PROPOSED
17 RULE-MAKING PROCEEDINGS, WHICH MUST TAKE PLACE NO FEWER THAN
18 TWENTY-ONE DAYS AFTER THE PUBLICATION;

19 (II) THE LEGAL AUTHORITY UNDER WHICH THE RULE IS PROPOSED;
20 AND

21 (III) EITHER THE TERMS OR THE SUBSTANCE OF THE PROPOSED
22 RULE OR A DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED.

23 (b) AT THE TIME AND PLACE STATED IN THE NOTICE, THE
24 COMMISSION SHALL HOLD A PUBLIC HEARING, AT WHICH IT SHALL AFFORD
25 INTERESTED PERSONS AN OPPORTUNITY TO SUBMIT WRITTEN DATA, VIEWS,
26 OR ARGUMENTS AND TO PRESENT THE SAME ORALLY UNLESS THE
27 COMMISSION DEEMS IT UNNECESSARY. THE COMMISSION SHALL CONSIDER

1 ALL SUCH SUBMISSIONS. THE COMMISSION SHALL MAKE ANY PROPOSED
2 RULE OR REVISED PROPOSED RULE IT IS TO CONSIDER AT THE PUBLIC
3 HEARING, TOGETHER WITH THE PURPOSE OF THE PROPOSED RULE AND THE
4 SPECIFIC LEGAL AUTHORITY UNDER WHICH THE RULE IS PROPOSED,
5 AVAILABLE TO ANY PERSON WHO REQUESTS SUCH INFORMATION AT LEAST
6 FIVE DAYS BEFORE THE HEARING. THE COMMISSION MUST BASE ANY
7 RULES IT PROMULGATES ON THE RECORD, WHICH SHALL CONSIST OF
8 PROPOSED RULES, EVIDENCE, EXHIBITS, AND OTHER MATTERS PRESENTED
9 TO OR CONSIDERED BY THE COMMISSION, MATTERS OFFICIALLY NOTICED,
10 RULINGS ON EXCEPTIONS, ANY FINDINGS OF FACT AND CONCLUSIONS OF
11 LAW PROPOSED BY ANY PARTY, AND ANY WRITTEN COMMENTS OR BRIEFS
12 SUBMITTED TO THE COMMISSION. EXCEPT AS OTHERWISE PROVIDED IN
13 PART 2 OF ARTICLE 72 OF THIS TITLE, ALL INFORMATION USED BY THE
14 COMMISSION IN THE DEVELOPMENT OF A RULE IS A PUBLIC DOCUMENT IN
15 ACCORDANCE WITH SAID PART 2 AND MUST BE OPEN FOR PUBLIC
16 INSPECTION.

17 (c) THE COMMISSION SHALL REVIEW ALL PROPOSED RULES. THE
18 COMMISSION MAY ONLY ADOPT A RULE IF:

19 (I) THE RECORD OF THE RULE-MAKING PROCEEDING
20 DEMONSTRATES THE NEED FOR THE RULE;

21 (II) THE PROPER LEGAL AUTHORITY EXISTS FOR THE RULE;

22 (III) TO THE EXTENT PRACTICABLE, THE RULE IS CLEARLY AND
23 SIMPLY STATED SO THAT ITS MEANING WILL BE UNDERSTOOD BY ANY
24 PARTY REQUIRED TO COMPLY WITH THE RULE;

25 (IV) THE RULE DOES NOT CONFLICT WITH OTHER PROVISIONS OF
26 LAW; AND

27 (V) THE COMMISSION EXPLAINS ANY DUPLICATION OR

1 OVERLAPPING OF RULES.

2 (d) WITHIN ONE HUNDRED EIGHTY-TWO DAYS AFTER THE LAST
3 PUBLIC HEARING ON A PROPOSED RULE, THE COMMISSION SHALL ADOPT
4 THE RULE PURSUANT TO THE RULE-MAKING PROCEEDING OR TERMINATE
5 THE PROCEEDING BY PUBLICATION OF A NOTICE TO THAT EFFECT IN THE
6 COLORADO REGISTER. A RULE OF THE COMMISSION BECOMES EFFECTIVE
7 TWENTY-ONE DAYS AFTER PUBLICATION OF THE RULE AS ADOPTED OR ON
8 SUCH LATER DATE AS MAY BE SPECIFIED IN THE RULE. ONCE A RULE
9 BECOMES EFFECTIVE, THE RULE-MAKING PROCESS IS DEEMED TO HAVE
10 BECOME FINAL AGENCY ACTION FOR JUDICIAL REVIEW PURPOSES.

11 (e) THE COMMISSION MAY ADOPT A TEMPORARY OR EMERGENCY
12 RULE WITHOUT COMPLIANCE WITH PARAGRAPH (b) OF THIS SUBSECTION
13 (3) AND WITH LESS THAN TWENTY-ONE DAYS' NOTICE AS PRESCRIBED IN
14 PARAGRAPH (a) OF THIS SUBSECTION (3) IF THE COMMISSION FINDS ON THE
15 RECORD THAT COMPLIANCE WITH SUCH REQUIREMENTS WOULD BE
16 CONTRARY TO THE PUBLIC INTEREST. THE COMMISSION SHALL PUBLISH ITS
17 FINDINGS AND A STATEMENT OF THE REASONS FOR THE ACTION WITH THE
18 RULE. A TEMPORARY OR EMERGENCY RULE BECOMES EFFECTIVE ON
19 ADOPTION OR ON SUCH LATER DATE AS MAY BE SPECIFIED IN THE RULE,
20 MUST BE PUBLISHED PROMPTLY, AND IS EFFECTIVE FOR NOT MORE THAN
21 ONE HUNDRED NINETEEN DAYS AFTER ITS ADOPTION OR FOR SUCH
22 SHORTER PERIOD AS MAY BE SPECIFIED IN THE RULE BY THE COMMISSION,
23 UNLESS THE RULE IS MADE PERMANENT UPON COMPLIANCE WITH
24 PARAGRAPHS (a) TO (d) OF THIS SUBSECTION (3).

25 (f) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
26 NOTHING IN THIS SUBSECTION (3) REQUIRES THE SUBMISSION OF ANY
27 PROPOSED RULE BY THE COMMISSION TO THE COMMITTEE ON LEGAL

1 SERVICES OF THE GENERAL ASSEMBLY OR LEGISLATIVE STAFF FOR THEIR
2 REVIEW OR APPROVAL.

3 **SECTION 4.** In Colorado Revised Statutes, 24-18-102, **amend**
4 (1); and **add** (1.3), (1.5), and (2.5) as follows:

5 **24-18-102. Definitions.** As used in this part 1, unless the context
6 otherwise requires:

7 (1) ~~"Business" means any corporation, limited liability company,~~
8 ~~partnership, sole proprietorship, trust or foundation, or other individual~~
9 ~~or organization carrying on a business, whether or not operated for profit~~

10 "ARTICLE XXIX" MEANS ARTICLE XXIX OF THE STATE CONSTITUTION.

11 (1.3) "BUSINESS" MEANS ANY CORPORATION, LIMITED LIABILITY
12 COMPANY, PARTNERSHIP, SOLE PROPRIETORSHIP, TRUST OR FOUNDATION,
13 OR OTHER INDIVIDUAL OR ORGANIZATION CARRYING ON A BUSINESS,
14 WHETHER OR NOT OPERATED FOR PROFIT.

15 (1.5) "COMMISSION" MEANS THE INDEPENDENT ETHICS
16 COMMISSION CREATED IN SECTION 5 (1) OF ARTICLE XXIX.

17 (2.5) "COVERED INDIVIDUAL" MEANS A PUBLIC OFFICER, MEMBER
18 OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR
19 GOVERNMENT EMPLOYEE AS THOSE TERMS ARE DEFINED IN SECTION 2 (1),
20 (3), AND (6) OF ARTICLE XXIX.

21 **SECTION 5.** In Colorado Revised Statutes, 24-18-103, **add** (3)
22 as follows:

23 **24-18-103. Public trust - breach of fiduciary duty.**

24 (3) PURSUANT TO SECTION 5 (1) OF ARTICLE XXIX, THE COMMISSION IS
25 EMPOWERED TO HEAR COMPLAINTS, ISSUE FINDINGS, ASSESS PENALTIES,
26 AND ISSUE ADVISORY OPINIONS ON ETHICS ISSUES ARISING UNDER ARTICLE
27 XXIX AND UNDER ANY OTHER STANDARDS OF CONDUCT AND REPORTING

1 REQUIREMENTS AS PROVIDED BY LAW. PURSUANT TO SECTION 6 OF
2 ARTICLE XXIX, ANY COVERED INDIVIDUAL WHO BREACHES THE PUBLIC
3 TRUST FOR PRIVATE GAIN AND ANY PERSON OR ENTITY INDUCING SUCH
4 BREACH IS LIABLE TO THE STATE OR LOCAL JURISDICTION FOR DOUBLE THE
5 AMOUNT OF THE FINANCIAL EQUIVALENT OF ANY BENEFITS OBTAINED BY
6 THE MISCONDUCT. PENALTIES THAT MAY BE IMPOSED BY THE COMMISSION
7 INCLUDE CENSURE OR REPRIMAND.

8

9 **SECTION 6.** In Colorado Revised Statutes, 24-18-113, **amend**
10 (2) as follows:

11 **24-18-113. Board of ethics for the general assembly - created**
12 **- duties.** (2) The board of ethics for the general assembly shall, upon
13 written request of a member of the general assembly, issue advisory
14 opinions concerning issues relating to the requesting member's conduct
15 and the provisions of this article. ANY SUCH ADVISORY OPINION ISSUED
16 BY THE BOARD IS NOT BINDING UPON THE COMMISSION IN ANY
17 PROCEEDING BROUGHT BEFORE THE COMMISSION AND MAY NOT
18 CONSTITUTE A DEFENSE TO ANY COMPLAINT BEFORE THE COMMISSION.

19

20 **SECTION 7.** In Colorado Revised Statutes, **repeal** 2-3-311 (2)
21 (d) and 24-18-112.

22 **SECTION 8. Effective date - applicability.** This act takes effect
23 July 1, 2016, and applies to offenses committed on or after said date.

24 **SECTION 9. Safety clause.** The general assembly hereby finds,
25 determines, and declares that this act is necessary for the immediate
26 preservation of the public peace, health, and safety.