

First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 07-0586.01 Jerry Barry

HOUSE BILL 07-1227

HOUSE SPONSORSHIP

Summers, Gardner C., and McNulty

SENATE SPONSORSHIP

Harvey,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING EVALUATIONS BY COMMISSIONS ON JUDICIAL
102 PERFORMANCE.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Repeals the authority of the chief justice of the Colorado supreme court to appoint members of judicial performance commissions, and increases the number of members appointed by the speaker of the house of representatives, the president of the senate, and the governor.

Repeals the authority of the Colorado supreme court to approve the rules of the state commission on judicial performance ("state commission").

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.

Encourages certain persons to file judicial evaluation reports with a district commission on judicial performance ("district commission") containing an assessment of each district and county judge within the judicial district that the person filing the report has either appeared before or supervised. Requires the assessment to be based on certain performance criteria. Requires a district commission to accept and consider any judicial evaluation report filed with the district commission. Requires a district commission to include within any narrative profile prepared by the district commission a summary of the assessment contained in any judicial evaluation report filed with the district commission. Requires that the retention recommendation of a state or district commission appear on the ballot next to the judge's name.

Directs the state commission to conduct an additional evaluation of each justice of the Colorado supreme court during the 5th year following a retention election and of each judge of the court of appeals during the 4th year following a retention election.

Requires that appropriations to the state commission and to district commissions appear as a separate line item in the annual general appropriations bill. Authorizes the state commission to solicit donations to pay the costs of making information generated by the commissions more widely available.

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

2 **SECTION 1.** 13-5.5-102 (1) (a), Colorado Revised Statutes, is
3 amended to read:

4 **13-5.5-102. State commission on judicial performance -**
5 **repeal.** (1) (a) (I) There is hereby established the state commission on
6 judicial performance, referred to in this article as the "state commission".
7 The state commission shall consist of ten members. The speaker of the
8 house of representatives and the president of the senate shall each appoint
9 ~~one attorney~~ TWO ATTORNEYS and one nonattorney. The governor ~~and~~
10 ~~the chief justice of the supreme court~~ shall each appoint ~~one attorney~~ TWO
11 ATTORNEYS and two nonattorneys. All members of the state commission
12 shall serve terms of four years; except that, of those first appointed, one
13 person appointed by each appointing authority shall serve for a term of

1 two years. All initial appointments shall be completed by July 1, 1988.
2 The term of any member of the state commission serving as of June 30,
3 1997, shall expire on November 30 of the year in which the term is
4 scheduled to expire. The term of any member appointed on or after July
5 1, 1997, to replace a member of the state commission at the end of his or
6 her term shall commence on December 1 of the year in which the
7 previous member's term is scheduled to expire.

8 (II) (A) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH
9 (I) OF THIS PARAGRAPH (a), A MEMBER OF THE STATE COMMISSION
10 SERVING AS OF JULY 1, 2007, WHO WAS APPOINTED BY THE CHIEF JUSTICE
11 OF THE SUPREME COURT MAY CONTINUE TO SERVE UNTIL THE END OF HIS
12 OR HER TERM. ON AND AFTER JULY 1, 2007, THE PRESIDENT OF THE
13 SENATE SHALL APPOINT AN ATTORNEY TO FILL THE FIRST VACANCY OF A
14 MEMBER OF THE STATE COMMISSION FORMERLY APPOINTED BY THE CHIEF
15 JUSTICE, THE GOVERNOR SHALL APPOINT AN ATTORNEY TO FILL THE
16 SECOND VACANCY OF A MEMBER OF THE STATE COMMISSION FORMERLY
17 APPOINTED BY THE CHIEF JUSTICE, AND THE SPEAKER OF THE HOUSE OF
18 REPRESENTATIVES SHALL APPOINT AN ATTORNEY TO FILL THE THIRD
19 VACANCY OF A MEMBER OF THE STATE COMMISSION FORMERLY
20 APPOINTED BY THE CHIEF JUSTICE.

21 (B) THIS SUBPARAGRAPH (II) IS REPEALED, EFFECTIVE JULY 1,
22 2010.

23 **SECTION 2.** 13-5.5-103 (1) (k), Colorado Revised Statutes, is
24 amended to read:

25 **13-5.5-103. Powers and duties of the state commission.** (1) In
26 addition to other powers conferred and duties imposed upon the state
27 commission by this article, the state commission has the following

1 powers and duties:

2 (k) To promulgate ~~subject to approval by the supreme court~~, rules
3 necessary to implement and effectuate the provisions of this article,
4 including rules to be followed by the district commissions;

5 **SECTION 3.** 13-5.5-104 (1) (a), Colorado Revised Statutes, is
6 amended to read:

7 **13-5.5-104. District commission on judicial performance -**
8 **repeal.** (1) (a) (I) There is hereby established in each judicial district a
9 district commission on judicial performance, referred to in this article as
10 the "district commission". The district commission shall consist of ten
11 members. The speaker of the house of representatives and the president
12 of the senate shall each appoint ~~one attorney~~ TWO ATTORNEYS and one
13 nonattorney. The governor ~~and the chief justice of the supreme court~~
14 shall ~~each~~ appoint ~~one attorney~~ TWO ATTORNEYS and two nonattorneys.
15 All members of the district commission shall serve terms of four years;
16 except that, of those first appointed, one person appointed by each
17 appointing authority shall serve for a term of two years. All initial
18 appointments shall be completed by July 1, 1989. The appointing
19 authority may remove members of the district commissions for cause.
20 The term of any member of a district commission serving as of June 30,
21 1997, shall expire on November 30 of the year in which the term is
22 scheduled to expire. The term of any member appointed on or after July
23 1, 1997, to replace a member of a district commission at the end of his or
24 her term shall commence on December 1 of the year in which the
25 previous member's term is scheduled to expire.

26 (II) (A) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH
27 (I) OF THIS PARAGRAPH (a), A MEMBER OF A DISTRICT COMMISSION

1 SERVING AS OF JULY 1, 2007, WHO WAS APPOINTED BY THE CHIEF JUSTICE
2 OF THE SUPREME COURT MAY CONTINUE TO SERVE UNTIL THE END OF HIS
3 OR HER TERM. ON AND AFTER JULY 1, 2007, THE PRESIDENT OF THE
4 SENATE SHALL APPOINT AN ATTORNEY TO FILL THE FIRST VACANCY ON
5 EACH DISTRICT COMMISSION OF A MEMBER FORMERLY APPOINTED BY THE
6 CHIEF JUSTICE, THE GOVERNOR SHALL APPOINT AN ATTORNEY TO FILL THE
7 SECOND VACANCY ON EACH DISTRICT COMMISSION OF A MEMBER
8 FORMERLY APPOINTED BY THE CHIEF JUSTICE, AND THE SPEAKER OF THE
9 HOUSE OF REPRESENTATIVES SHALL APPOINT AN ATTORNEY TO FILL THE
10 THIRD VACANCY ON EACH DISTRICT COMMISSION OF A MEMBER FORMERLY
11 APPOINTED BY THE CHIEF JUSTICE.

12 (B) THIS SUBPARAGRAPH (II) IS REPEALED, EFFECTIVE JULY 1,
13 2010.

14 **SECTION 4.** 13-5.5-105, Colorado Revised Statutes, is amended
15 BY THE ADDITION OF A NEW SUBSECTION to read:

16 **13-5.5-105. Powers and duties of district commissions.**

17 (2) EACH DISTRICT COMMISSION SHALL ACCEPT AND CONSIDER ANY
18 JUDICIAL EVALUATION REPORT THAT IS FILED PURSUANT TO SECTION
19 13-5.5-105.5.

20 **SECTION 5.** Article 5.5 of title 13, Colorado Revised Statutes,
21 is amended BY THE ADDITION OF A NEW SECTION to read:

22 **13-5.5-105.5. Judicial evaluation report - discretionary.**

23 (1) EACH OF THE FOLLOWING PERSONS IS ENCOURAGED TO PREPARE AND
24 FILE A JUDICIAL EVALUATION REPORT WITH THE DISTRICT COMMISSION
25 LOCATED IN ANY JUDICIAL DISTRICT IN WHICH HE OR SHE HAS APPEARED
26 BEFORE DISTRICT OR COUNTY JUDGES, OR IN WHICH HE OR SHE SUPERVISES
27 JUDGES:

- 1 (a) EACH DISTRICT ATTORNEY;
- 2 (b) EACH CHIEF DEPUTY PUBLIC DEFENDER OR DEPUTY PUBLIC
3 DEFENDER WHO MANAGES A REGIONAL OFFICE ESTABLISHED BY THE
4 STATE PUBLIC DEFENDER PURSUANT TO SECTION 21-1-102 (4), C.R.S.;
- 5 (c) AN ATTORNEY UNDER CONTRACT WITH THE OFFICE OF
6 ALTERNATE DEFENSE COUNSEL PURSUANT TO SECTION 21-2-105, C.R.S.;
- 7 AND
- 8 (d) EACH CHIEF JUDGE APPOINTED PURSUANT TO SUBSECTION (4)
9 OF SECTION 5 OF ARTICLE VI OF THE STATE CONSTITUTION.
- 10 (2) (a) A PERSON LISTED IN SUBSECTION (1) OF THIS SECTION WHO
11 FILES A JUDICIAL EVALUATION REPORT UNDER THIS SECTION SHALL
12 PROCEED IN ACCORDANCE WITH THIS SUBSECTION (2).
- 13 (b) (I) A REPORT FILED BY A PERSON LISTED IN PARAGRAPH (a) OR
14 (b) OF SUBSECTION (1) OF THIS SECTION SHALL CONTAIN AN EVALUATION
15 OF ALL DISTRICT AND COUNTY JUDGES IN THE JUDICIAL DISTRICT BEFORE
16 WHOM THE PERSON FILING THE REPORT, OR THE DEPUTIES UNDER HIS OR
17 HER SUPERVISION, HAS APPEARED.
- 18 (II) A REPORT FILED BY A PERSON LISTED IN PARAGRAPH (c) OF
19 SUBSECTION (1) OF THIS SECTION SHALL CONTAIN AN EVALUATION OF ALL
20 DISTRICT AND COUNTY JUDGES IN THE JUDICIAL DISTRICT BEFORE WHOM
21 THE PERSON FILING THE REPORT HAS APPEARED IN HIS OR HER CAPACITY
22 AS AN ATTORNEY UNDER CONTRACT WITH THE OFFICE OF ALTERNATE
23 DEFENSE COUNSEL.
- 24 (III) A REPORT FILED BY A PERSON LISTED IN PARAGRAPH (d) OF
25 SUBSECTION (1) OF THIS SECTION SHALL CONTAIN AN EVALUATION OF ALL
26 DISTRICT AND COUNTY JUDGES IN THE JUDICIAL DISTRICT IN WHICH THE
27 CHIEF JUDGE IS APPOINTED.

1 (c) A JUDICIAL EVALUATION REPORT FILED UNDER THIS SECTION
2 SHALL BE FILED WITH THE DISTRICT COMMISSION NOT LATER THAN APRIL
3 1, 2008, AND NOT LATER THAN APRIL 1 OF EACH EVEN-NUMBERED YEAR
4 THEREAFTER.

5 (d) A PERSON FILING A JUDICIAL EVALUATION REPORT UNDER THIS
6 SECTION SHALL INCLUDE IN THE REPORT HIS OR HER ASSESSMENT OF THE
7 JUDGE BEING EVALUATED. THE ASSESSMENT SHALL BE BASED UPON THE
8 FOLLOWING PERFORMANCE CRITERIA:

9 (I) INTEGRITY;

10 (II) KNOWLEDGE AND UNDERSTANDING OF SUBSTANTIVE,
11 PROCEDURAL, CONSTITUTIONAL, AND EVIDENTIARY LAW;

12 (III) COMPLIANCE WITH SUBSTANTIVE, PROCEDURAL,
13 CONSTITUTIONAL, AND EVIDENTIARY LAW;

14 (IV) COMMUNICATION SKILLS;

15 (V) PREPARATION, ATTENTIVENESS, AND CONTROL OVER JUDICIAL
16 PROCEEDINGS;

17 (VI) PRETRIAL PRACTICES;

18 (VII) BONDING PRACTICES;

19 (VIII) SENTENCING PRACTICES;

20 (IX) DOCKET MANAGEMENT AND PROMPT CASE DISPOSITION;

21 (X) ADMINISTRATIVE SKILLS;

22 (XI) PUNCTUALITY;

23 (XII) EFFECTIVENESS IN WORKING WITH PARTICIPANTS IN THE
24 JUDICIAL PROCESS;

25 (XIII) COURTESY AND PROFESSIONALISM TOWARD PARTIES,
26 VICTIMS, WITNESSES, AND ATTORNEYS;

27 (XIV) SERVICE TO THE LEGAL PROFESSION AND THE PUBLIC; AND

1 (XV) ANY OTHER CRITERIA DEEMED BY THE PERSON FILING THE
2 REPORT TO BE RELEVANT TO THE PERFORMANCE OF JUDICIAL DUTIES.

3 (3) THE ASSESSMENT DESCRIBED IN SUBSECTION (2) OF THIS
4 SECTION SHALL BE BASED ON EXPERIENCES THE PERSON FILING THE
5 REPORT HAS HAD WHILE APPEARING IN CASES PRESIDED OVER BY THE
6 JUDGE BEING EVALUATED OR WHILE SUPERVISING THE JUDGE BEING
7 EVALUATED. IF A JUDICIAL EVALUATION REPORT IS FILED BY A PERSON
8 LISTED IN PARAGRAPH (a) OR (b) OF SUBSECTION (1) OF THIS SECTION, THE
9 ASSESSMENT MAY BE BASED ON THE EXPERIENCES THAT THE PERSON'S
10 DEPUTIES HAVE HAD WHILE APPEARING IN CASES PRESIDED OVER BY THE
11 JUDGE BEING EVALUATED.

12 (4) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ALTER THE
13 POWER OR DUTY OF A PERSON LISTED IN SUBSECTION (1) OF THIS SECTION
14 THAT IS IMPOSED BY RULE OR STATUTE TO COMPLETE SURVEYS FOR, OR TO
15 PARTICIPATE IN INTERVIEWS WITH, A DISTRICT COMMISSION CONCERNING
16 THE EVALUATION OF DISTRICT AND COUNTY JUDGES.

17 (5) A PERSON LISTED IN SUBSECTION (1) OF THIS SECTION SHALL
18 BE IMMUNE FROM SUIT IN ANY ACTION, CIVIL OR CRIMINAL, BASED UPON
19 OFFICIAL ACTS PERFORMED IN GOOD FAITH TO COMPLY WITH THIS
20 SECTION.

21 **SECTION 6.** 13-5.5-106 (1) (b) and (2) (b), Colorado Revised
22 Statutes, are amended, and the said 13-5.5-106 is further amended BY
23 THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to
24 read:

25 **13-5.5-106. Recommendations on retention of justices and**
26 **judges.** (1) (b) After the requirement of paragraph (a) of this subsection
27 (1) is met, the state commission shall make a recommendation regarding

1 the retention of each appellate justice or judge who declares his OR HER
2 intent to stand for retention, which recommendation shall be stated as
3 "retain", "do not retain", or "no opinion". A "no opinion"
4 recommendation shall be made only when the state commission
5 concludes that results are not sufficiently clear to make a firm
6 recommendation and shall be accompanied by a detailed explanation.
7 THE RETENTION RECOMMENDATION MADE PURSUANT TO THIS PARAGRAPH
8 (b) SHALL APPEAR ON THE GENERAL ELECTION BALLOT NEXT TO THE
9 JUSTICE'S OR JUDGE'S NAME.

10 (1.5) (a) ON AND AFTER JULY 1, 2007, IN ADDITION TO THE
11 EVALUATIONS REQUIRED BY SUBSECTION (1) OF THIS SECTION, THE STATE
12 COMMISSION SHALL CONDUCT AN EVALUATION OF EACH JUSTICE OF THE
13 SUPREME COURT DURING THE FIFTH YEAR FOLLOWING THE JUSTICE'S MOST
14 RECENT RETENTION ELECTION AND OF EACH JUDGE OF THE COURT OF
15 APPEALS DURING THE FOURTH YEAR FOLLOWING THE JUDGE'S MOST
16 RECENT RETENTION ELECTION. EVALUATIONS PURSUANT TO THIS
17 SUBSECTION (1.5) SHALL BE COMPLETED AND NARRATIVE PROFILES
18 PREPARED FOR COMMUNICATION TO THE APPELLATE JUSTICE OR JUDGE NO
19 LATER THAN JULY 1 OF THE YEAR IN WHICH THE EVALUATION IS
20 CONDUCTED. THE APPELLATE JUSTICE OR JUDGE SHALL HAVE THE
21 OPPORTUNITY TO MEET WITH THE STATE COMMISSION OR OTHERWISE
22 RESPOND TO THE EVALUATION NO LATER THAN TEN DAYS FOLLOWING THE
23 JUSTICE'S OR JUDGE'S RECEIPT OF THE EVALUATION. IF THE MEETING IS
24 HELD OR RESPONSE IS MADE, THE STATE COMMISSION MAY REVISE ITS
25 EVALUATION.

26 (b) AFTER THE REQUIREMENT OF PARAGRAPH (a) OF THIS
27 SUBSECTION (1.5) IS MET, THE STATE COMMISSION SHALL MAKE A

1 RECOMMENDATION REGARDING THE RETENTION OF EACH APPELLATE
2 JUSTICE OR JUDGE, WHICH RECOMMENDATION SHALL BE STATED AS
3 "RETAIN", "DO NOT RETAIN", OR "NO OPINION". A "NO OPINION"
4 RECOMMENDATION SHALL BE MADE ONLY WHEN THE STATE COMMISSION
5 CONCLUDES THAT RESULTS ARE NOT SUFFICIENTLY CLEAR TO MAKE A
6 FIRM RECOMMENDATION AND SHALL BE ACCOMPANIED BY A DETAILED
7 EXPLANATION.

8 (c) THE STATE COMMISSION SHALL RELEASE THE NARRATIVE
9 PROFILE, THE RECOMMENDATION, AND ANY OTHER RELEVANT
10 INFORMATION TO THE PUBLIC NO LATER THAN OCTOBER 1 OF THE YEAR IN
11 WHICH THE EVALUATION IS CONDUCTED.

12 (2) (b) After the requirement of paragraph (a) of this subsection
13 (2) is met, the district commission shall make a recommendation
14 regarding the retention of each district or county judge who declares his
15 OR HER intent to stand for retention, which recommendation shall be
16 stated as "retain", "do not retain", or "no opinion". A "no opinion"
17 recommendation shall be made only when the district commission
18 concludes that results are not sufficiently clear to make a firm
19 recommendation and shall be accompanied by a detailed explanation.
20 THE RETENTION RECOMMENDATION MADE PURSUANT TO THIS PARAGRAPH
21 (b) SHALL APPEAR ON THE GENERAL ELECTION BALLOT NEXT TO THE
22 JUDGE'S NAME.

23 (4) (a) A NARRATIVE PROFILE PREPARED BY THE DISTRICT
24 COMMISSION UNDER SUBSECTION (2) OR (3) OF THIS SECTION SHALL
25 INCLUDE A SUMMARY OF THE ASSESSMENT CONTAINED IN ANY JUDICIAL
26 EVALUATION REPORT FILED WITH THE DISTRICT COMMISSION PURSUANT
27 TO SECTION 13-5.5-105.5.

1 (b) NOTHING IN THIS SUBSECTION (4) SHALL BE CONSTRUED TO
2 ALTER THE DISTRICT COMMISSION'S POWER OR DUTY IMPOSED BY STATUTE
3 OR RULE TO INTERVIEW OR DISTRIBUTE A SURVEY TO A PERSON LISTED IN
4 SECTION 13-5.5-105.5 (1) PRIOR TO THE DISTRICT COMMISSION'S
5 PREPARATION OF THE NARRATIVE PROFILE.

6 **SECTION 7.** 13-5.5-103 (1) (i), Colorado Revised Statutes, is
7 amended to read:

8 **13-5.5-103. Powers and duties of the state commission.** (1) In
9 addition to other powers conferred and duties imposed upon the state
10 commission by this article, the state commission has the following
11 powers and duties:

12 (i) To produce and distribute to the public a narrative profile and
13 such other information as may be permitted by the rules of the state
14 commission concerning each appellate justice or judge subject to
15 ~~retention election~~ EVALUATION PURSUANT TO SECTION 13-5.5-106 (1) OR
16 (1.5);

17 **SECTION 8.** 13-5.5-107, Colorado Revised Statutes, is amended
18 to read:

19 **13-5.5-107. Acceptance of private or federal grants - general**
20 **appropriations.** (1) The state commission is authorized to accept any
21 grants of federal or private funds made available for any purpose
22 consistent with the provisions of this article. Any funds received
23 pursuant to this section shall be transmitted to the state treasurer, who
24 shall credit the same to the state commission on judicial performance
25 cash fund, which is hereby created and referred to in this section as the
26 "fund". The fund shall also include the amount of the increases in docket
27 fees collected pursuant to sections 13-32-105 (1) and 42-4-1710 (4) (a),

1 C.R.S. Any interest derived from the deposit and investment of moneys
2 in the fund shall be credited to the fund. Any unexpended and
3 unencumbered moneys remaining in the fund at the end of any fiscal year
4 shall remain in the fund and shall not be credited or transferred to the
5 general fund or another fund. Moneys in the fund may be expended by
6 the state commission OR A DISTRICT COMMISSION, subject to annual
7 appropriation by the general assembly, for the purposes of this article.
8 APPROPRIATIONS FOR THE STATE COMMISSION AND THE DISTRICT
9 COMMISSIONS SHALL BE BY SEPARATE LINE ITEMS IN THE ANNUAL
10 GENERAL APPROPRIATIONS BILL. In addition, the general assembly may
11 make annual appropriations from the general fund for the purposes of this
12 article.

13 (2) THE STATE COMMISSION IS ALSO AUTHORIZED TO ACCEPT
14 GIFTS, GRANTS, AND DONATIONS TO PAY FOR THE COSTS ASSOCIATED WITH
15 MAKING THE NARRATIVE PROFILE, THE RETENTION RECOMMENDATION,
16 AND ANY OTHER INFORMATION GENERATED BY THE STATE COMMISSION
17 OR A DISTRICT COMMISSION WIDELY KNOWN TO THE PUBLIC THROUGH THE
18 STATE HOME PAGE AND OTHER MASS COMMUNICATIONS MEDIA. ANY
19 SUCH GIFTS, GRANTS, OR DONATIONS SHALL BE TRANSFERRED TO THE
20 STATE TREASURER FOR DEPOSIT IN THE FUND AND SHALL BE SUBJECT TO
21 ANNUAL APPROPRIATION.

22 **SECTION 9. Effective date.** This act shall take effect at 12:01
23 a.m. on the day following the expiration of the ninety-day period after
24 final adjournment of the general assembly that is allowed for submitting
25 a referendum petition pursuant to article V, section 1 (3) of the state
26 constitution, (August 8, 2007, if adjournment sine die is on May 9, 2007);
27 except that, if a referendum petition is filed against this act or an item,

1 section, or part of this act within such period, then the act, item, section,
2 or part, if approved by the people, shall take effect on the date of the
3 official declaration of the vote thereon by proclamation of the governor.