

**First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 07-0889.01 Bob Lackner

SENATE BILL 07-210

SENATE SPONSORSHIP

McElhany and Groff,

HOUSE SPONSORSHIP

Marshall and May M.,

Senate Committees

State, Veterans & Military Affairs
Appropriations

House Committees

State, Veterans, & Military Affairs
Appropriations

HOUSE
Amended 3rd Reading
April 20, 2007

HOUSE
Amended 2nd Reading
April 4, 2007

A BILL FOR AN ACT

101 **CONCERNING THE ESTABLISHMENT OF THE INDEPENDENT ETHICS**
102 **COMMISSION AS REQUIRED BY ARTICLE XXIX OF THE STATE**
103 **CONSTITUTION, AND MAKING AN APPROPRIATION THEREFOR.**

SENATE
3rd Reading Unamended
April 2, 2007

SENATE
Amended 2nd Reading
March 30, 2007

Bill Summary

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

Implements article XXIX of the state constitution, concerning ethics in government (article XXIX), enacted by the voters at the 2006 general election, in the following respects:

Establishes the independent ethics commission (commission) in the office of administrative courts in the department of personnel. Specifies requirements pertaining

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.

to the appointment and terms of commission members, the reimbursement of expenses incurred by commission members, and the powers and duties of the commission.

Requires 2 members of the commission to have been continuously affiliated with the democratic party for at least 2 years prior to their appointment to the commission, 2 members of the commission to have been continuously affiliated with the republican party for at least 2 years prior to appointment to the commission, and the 5th and final member of the commission to have been continuously unaffiliated with any political party for at least 2 years prior to appointment to the commission. Specifies that not more than one member of the commission shall have been continuously unaffiliated with any political party for at least 2 years prior to appointment to the commission.

Requires of the 4 members appointed to the commission by the senate, house of representatives, governor, and chief justice to be appointed by the applicable appointing authority from among a list of 12 names jointly submitted by the president and minority leader of the senate and the speaker and minority leader of the house of representatives. Requires the president and minority leader of the senate and the speaker and minority leader of the house of representatives to each contribute 3 names to the list of 12 names. Specifies that each of the 3 names submitted by the president, speaker, and minority leaders shall be of persons affiliated with the same political party as the president, speaker, and minority leaders, as applicable.

Requires the commission to prepare a response to a request for an advisory opinion as to whether a particular action satisfies the requirements of article XXIX not more than a specified period after the request is made to the commission. Where the commission fails to prepare a response to such a request within the period required by the act, the action that is the subject of the request shall be deemed to satisfy the requirements of article XXIX.

Requires the commission to adopt reasonable rules as may be necessary for the purpose of administering and enforcing the provisions of article XXIX and any other standards of conduct and reporting requirements as provided by law. Requires any such rules to be promulgated in conformity with the "State Administrative Procedure Act".

Authorizes the commission to employ staff.

Authorizes any member of the commission to issue a

subpoena requiring the appearance of a witness or the production of documents; except that, in such cases, specifies that the member shall be liable for payment of reasonable attorney fees and costs incurred by any party in defending against a complaint resulting in the issuance of the subpoena that was ultimately found to be without merit. Where all of the members of the commission approve a motion to issue a subpoena requiring the appearance of a witness or the production of documents, specifies that no such liability shall attach to the commission or to any of its individual members in connection with issuance of the subpoena, regardless of whether or not the complaint is found to be without merit.

Defines terms. Makes an appropriation.

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

2 **SECTION 1.** Title 24, Colorado Revised Statutes, is amended BY
3 THE ADDITION OF A NEW ARTICLE to read:

4 **ARTICLE 18.5**

5 **Independent Ethics Commission**

6 **24-18.5-101. Independent ethics commission - establishment**
7 **- membership - subpoena power - definitions.** (1) AS USED IN THIS
8 ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 (a) "ARTICLE XXIX" MEANS ARTICLE XXIX OF THE STATE
10 CONSTITUTION APPROVED BY THE VOTERS AT THE 2006 GENERAL
11 ELECTION.

12 (b) "COMMISSION" MEANS THE INDEPENDENT ETHICS COMMISSION
13 CREATED IN SECTION 5 (1) OF ARTICLE XXIX.

14 (2) (a) THE INDEPENDENT ETHICS COMMISSION IS HEREBY
15 ESTABLISHED IN THE OFFICE OF ADMINISTRATIVE COURTS IN THE
16 DEPARTMENT OF PERSONNEL CREATED IN SECTION 24-30-1001. THE
17 COMMISSION SHALL CONSIST OF FIVE MEMBERS. THE APPOINTING

1 AUTHORITIES FOR THE COMMISSION MEMBERS, THE ORDER OF
2 APPOINTMENT OF SUCH MEMBERS, AND OTHER REQUIREMENTS PERTAINING
3 TO COMMISSION MEMBERSHIP SHALL BE AS SPECIFIED IN SECTION 5 (2) (a)
4 OF ARTICLE XXIX. SUBJECT TO THE REQUIREMENTS OF PARAGRAPH (b)
5 OF THIS SUBSECTION (2), THE MEMBER APPOINTED BY THE SENATE
6 PURSUANT TO SECTION 5 (2) (a) (I) OF ARTICLE XXIX SHALL BE
7 APPOINTED BY THE PRESIDENT OF THE SENATE WITH THE APPROVAL OF
8 TWO-THIRDS OF THE MEMBERS ELECTED TO THE SENATE. SUBJECT TO
9 THE REQUIREMENTS OF PARAGRAPH (b) OF THIS SUBSECTION (2), THE
10 MEMBER APPOINTED BY THE HOUSE OF REPRESENTATIVES PURSUANT TO
11 SECTION 5 (2) (a) (II) OF ARTICLE XXIX SHALL BE APPOINTED BY THE
12 SPEAKER OF THE HOUSE OF REPRESENTATIVES WITH THE APPROVAL OF
13 TWO-THIRDS OF THE MEMBERS ELECTED TO THE HOUSE OF
14 REPRESENTATIVES. THE MEMBER APPOINTED BY THE HOUSE OF
15 REPRESENTATIVES PURSUANT TO THIS PARAGRAPH (a) SHALL NOT BE
16 AFFILIATED WITH THE SAME POLITICAL PARTY AS THE PERSON APPOINTED
17 BY THE SENATE.

18 (b) IN CONNECTION WITH THE APPOINTMENT OF COMMISSION
19 MEMBERS, THE MAJOR POLITICAL PARTIES AS DEFINED IN SECTION 1-1-104
20 (22), C.R.S., SHALL HAVE EQUAL NUMBERS OF MEMBERS APPOINTED TO
21 THE COMMISSION.

22 (c) THE COMMISSION MEMBERS SHALL BE APPOINTED TO
23 FOUR-YEAR TERMS; EXCEPT THAT THE FIRST MEMBER APPOINTED BY THE
24 SENATE AND THE FIRST MEMBER APPOINTED BY THE GOVERNOR SHALL
25 INITIALLY SERVE TWO-YEAR TERMS. APPOINTMENTS TO THE COMMISSION
26 BY THE SENATE AND THE HOUSE OF REPRESENTATIVES SHALL BE MADE NO
27 LATER THAN MAY 1, 2007, AND THE INITIAL TERMS OF COMMISSION

1 MEMBERS SHALL COMMENCE JULY 1, 2007.

2 (3) COMMISSION MEMBERS SHALL SERVE WITHOUT
3 COMPENSATION; EXCEPT THAT COMMISSION MEMBERS SHALL BE
4 REIMBURSED FOR THE ACTUAL AND NECESSARY EXPENSES THAT THEY
5 INCUR IN CARRYING OUT THEIR DUTIES AND RESPONSIBILITIES AS
6 COMMISSION MEMBERS.

7 (4) IN ACCORDANCE WITH THE PROVISIONS OF SECTION 5 OF
8 ARTICLE XXIX , THE POWERS AND DUTIES OF THE COMMISSION SHALL BE
9 AS FOLLOWS:

10 (a) TO HEAR COMPLAINTS, ISSUE FINDINGS, AND ASSESS PENALTIES
11 ON ETHICS ISSUES ARISING UNDER ARTICLE XXIX AND OTHER STANDARDS
12 OF CONDUCT AND REPORTING REQUIREMENTS AS PROVIDED BY LAW; AND

13 (b) (I) TO ISSUE ADVISORY OPINIONS AND LETTER RULINGS ON
14 ETHICS ISSUES ARISING UNDER ARTICLE XXIX AND OTHER STANDARDS OF
15 CONDUCT AND REPORTING REQUIREMENTS AS PROVIDED BY LAW.

16 (II) THE COMMISSION SHALL PREPARE A RESPONSE TO A REQUEST
17 FOR AN ADVISORY OPINION FROM A PUBLIC OFFICER, MEMBER OF THE
18 GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR GOVERNMENT
19 EMPLOYEE AS TO WHETHER PARTICULAR ACTION BY SUCH OFFICER,
20 MEMBER, OFFICIAL, OR EMPLOYEE SATISFIES THE REQUIREMENTS OF
21 ARTICLE XXIX NOT MORE THAN TWENTY BUSINESS DAYS AFTER THE
22 REQUEST IS MADE TO THE COMMISSION.

23 (III) ANY PERSON WHO IS NOT A PUBLIC OFFICER, MEMBER OF THE
24 GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR GOVERNMENT
25 EMPLOYEE MAY SUBMIT A REQUEST TO THE COMMISSION FOR A LETTER
26 RULING CONCERNING WHETHER POTENTIAL CONDUCT OF THE PERSON
27 MAKING THE REQUEST SATISFIES THE REQUIREMENTS OF ARTICLE XXIX.

1 IN SUCH CASE, THE COMMISSION SHALL ISSUE A RESPONSE TO THE REQUEST
2 AS SOON AS PRACTICABLE.

3 (IV) EACH ADVISORY OPINION OR LETTER RULING, AS APPLICABLE,
4 ISSUED BY THE COMMISSION SHALL BE A PUBLIC DOCUMENT AND SHALL BE
5 PROMPTLY POSTED ON A WEBSITE THAT SHALL BE MAINTAINED BY THE
6 COMMISSION; EXCEPT THAT, IN THE CASE OF A LETTER RULING, THE
7 COMMISSION SHALL REDACT THE NAME OF THE PERSON REQUESTING THE
8 RULING OR OTHER IDENTIFYING INFORMATION BEFORE IT IS POSTED ON THE
9 WEBSITE.

10 (5) (a) SUBJECT TO THE PROVISIONS OF PARAGRAPH (c) OF THIS
11 SUBSECTION (5), THE COMMISSION SHALL DISMISS AS FRIVOLOUS ANY
12 COMPLAINT FILED UNDER ARTICLE XXIX THAT FAILS TO ALLEGE THAT A
13 PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL
14 GOVERNMENT OFFICIAL, OR GOVERNMENT EMPLOYEE HAS ACCEPTED OR
15 RECEIVED ANY GIFT OR OTHER THING OF VALUE FOR PRIVATE GAIN OR
16 PERSONAL FINANCIAL GAIN.

17 (b) FOR PURPOSES OF THIS SUBSECTION (5):

18 (I) "OFFICIAL ACT" SHALL HAVE THE SAME MEANING AS SET FORTH
19 IN SECTION 24-18-102 (7).

20 (II) "PRIVATE GAIN" OR "PERSONAL FINANCIAL GAIN" MEANS ANY
21 MONEY, FORBEARANCE, FORGIVENESS OF INDEBTEDNESS, GIFT, OR OTHER
22 THING OF VALUE GIVEN OR OFFERED BY A PERSON SEEKING TO INFLUENCE
23 AN OFFICIAL ACT THAT IS PERFORMED IN THE COURSE AND SCOPE OF THE
24 PUBLIC DUTIES OF A PUBLIC OFFICER, MEMBER OF THE GENERAL
25 ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR GOVERNMENT EMPLOYEE.

26 (c) THIS SUBSECTION (5) IS REPEALED IF THE COLORADO SUPREME
27 COURT HOLDS, IN RESPONSE TO ONE OR MORE WRITTEN QUESTIONS

1 SUBMITTED BY THE GENERAL ASSEMBLY PURSUANT TO SECTION 3 OF
2 ARTICLE VI OF THE STATE CONSTITUTION, THAT THE STANDARD OF
3 ACCEPTING OR RECEIVING "ANY GIFT OR OTHER THING OF VALUE FOR
4 PRIVATE GAIN OR PERSONAL FINANCIAL GAIN" SPECIFIED IN PARAGRAPH (a)
5 OF THIS SUBSECTION (5) IS UNCONSTITUTIONAL IN APPLYING SECTION 3 (1)
6 OR (2) OF ARTICLE XXIX.

7 (6) PURSUANT TO THE PROVISIONS OF SECTION 5 (1) OF ARTICLE
8 XXIX, THE COMMISSION SHALL ADOPT REASONABLE RULES AS MAY BE
9 NECESSARY FOR THE PURPOSE OF ADMINISTERING AND ENFORCING THE
10 PROVISIONS OF ARTICLE XXIX AND ANY OTHER STANDARDS OF CONDUCT
11 AND REPORTING REQUIREMENTS AS PROVIDED BY LAW. ANY RULES SHALL
12 BE PROMULGATED IN ACCORDANCE WITH THE REQUIREMENTS OF ARTICLE
13 4 OF THIS TITLE.

14 (7) SUBJECT TO AVAILABLE APPROPRIATIONS, THE COMMISSION
15 MAY EMPLOY SUCH STAFF AS IT DEEMS NECESSARY TO ENABLE IT TO
16 CARRY OUT ITS FUNCTIONS IN ACCORDANCE WITH THE REQUIREMENTS OF
17 THIS ARTICLE AND ARTICLE XXIX.

18 (7) NO SUBPOENA REQUIRING THE ATTENDANCE OF A WITNESS OR
19 THE PRODUCTION OF DOCUMENTS SHALL BE ISSUED BY THE COMMISSION
20 UNLESS A MOTION TO ISSUE ANY SUCH SUBPOENA HAS BEEN MADE BY ONE
21 MEMBER OF THE COMMISSION AND APPROVED BY NO FEWER THAN FOUR
22 MEMBERS OF THE COMMISSION.

23 (8) ANY FINAL ACTION OF THE COMMISSION CONCERNING A
24 COMPLAINT SHALL BE SUBJECT TO JUDICIAL REVIEW BY THE DISTRICT
25 COURT FOR THE CITY AND COUNTY OF DENVER.

26 **SECTION 2. Appropriation.** (1) In addition to any other
27 appropriation, there is hereby appropriated, out of any moneys in the

1 general fund not otherwise appropriated, to the department of personnel
2 and administration, executive office, for the provision of legal services to
3 the division of administrative courts, for the fiscal year beginning July 1,
4 2007, the sum of one hundred twenty-one thousand nine hundred
5 eighty-six dollars (\$121,986), or so much thereof as may be necessary, for
6 the implementation of this act.

7 (2) In addition to any other appropriation, there is hereby
8 appropriated, out of any moneys in the general fund not otherwise
9 appropriated, to the department of personnel and administration, division
10 of administrative courts, for the fiscal year beginning July 1, 2007, the
11 sum of ninety-eight thousand ten dollars (\$98,010) and 1.8 FTE, or so
12 much thereof as may be necessary, for the implementation of this act.

13 (3) In addition to any other appropriation, there is hereby
14 appropriated, to the department of law, for the fiscal year beginning July
15 1, 2007, the sum of one hundred twenty-one thousand nine hundred
16 eighty-six dollars (\$121,986) and 0.9 FTE, or so much thereof as may be
17 necessary, for the provision of legal services to the department of
18 personnel and administration, division of administrative courts, related to
19 the implementation of this act. Said sum shall be from cash funds exempt
20 received from the department of personnel and administration, executive
21 office, out of the appropriation made in subsection (1) of this section.

22 (4) For implementation of this act, the appropriation made in
23 section 21 of the annual general appropriation act for the fiscal year
24 beginning July 1, 2007, shall be adjusted as follows: The general fund
25 appropriation to the controlled maintenance trust fund is decreased by two
26 hundred nineteen thousand nine hundred ninety-six dollars (\$219,996).

27 **SECTION 3. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.