BB 07-1227

HOUSE BILL 07-1227

CONCERNING EVALUATIONS BY COMMISSIONS ON JUDICIAL PERFORMANCE.

A BILL FOR AN ACT

(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").
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.

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

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

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

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


(B) THIS SUBPARAGRAPH (II) IS REPEALED, EFFECTIVE JULY 1, 2010.

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

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

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

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

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

(II) (A) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), A MEMBER OF A DISTRICT COMMISSION
SERVING AS OF JULY 1, 2007, WHO WAS APPOINTED BY THE CHIEF JUSTICE
OF THE SUPREME COURT MAY CONTINUE TO SERVE UNTIL THE END OF HIS
OR HER TERM. ON AND AFTER JULY 1, 2007, THE PRESIDENT OF THE
SENATE SHALL APPOINT AN ATTORNEY TO FILL THE FIRST VACANCY ON
EACH DISTRICT COMMISSION OF A MEMBER FORMERLY APPOINTED BY THE
CHIEF JUSTICE, THE GOVERNOR SHALL APPOINT AN ATTORNEY TO FILL THE
SECOND VACANCY ON EACH DISTRICT COMMISSION OF A MEMBER
FORMERLY APPOINTED BY THE CHIEF JUSTICE, AND THE SPEAKER OF THE
HOUSE OF REPRESENTATIVES SHALL APPOINT AN ATTORNEY TO FILL THE
THIRD VACANCY ON EACH DISTRICT COMMISSION OF A MEMBER FORMERLY
APPOINTED BY THE CHIEF JUSTICE.

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

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

13-5.5-105. Powers and duties of district commissions.
(2) EACH DISTRICT COMMISSION SHALL ACCEPT AND CONSIDER ANY
JUDICIAL EVALUATION REPORT THAT IS FILED PURSUANT TO SECTION
13-5.5-105.5.

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

13-5.5-105.5. Judicial evaluation report - discretionary.
(1) EACH OF THE FOLLOWING PERSONS IS ENCOURAGED TO PREPARE AND
FILE A JUDICIAL EVALUATION REPORT WITH THE DISTRICT COMMISSION
LOCATED IN ANY JUDICIAL DISTRICT IN WHICH HE OR SHE HAS APPEARED
BEFORE DISTRICT OR COUNTY JUDGES, OR IN WHICH HE OR SHE SUPERVISES
JUDGES:
(a) Each district attorney;
(b) each chief deputy public defender or deputy public defender who manages a regional office established by the state public defender pursuant to section 21-1-102 (4), C.R.S.;
(c) an attorney under contract with the office of alternate defense counsel pursuant to section 21-2-105, C.R.S.; and
(d) each chief judge appointed pursuant to subsection (4) of section 5 of article VI of the state constitution.

(2) (a) a person listed in subsection (1) of this section who files a judicial evaluation report under this section shall proceed in accordance with this subsection (2).

(b) (I) A report filed by a person listed in paragraph (a) or (b) of subsection (1) of this section shall contain an evaluation of all district and county judges in the judicial district before whom the person filing the report, or the deputies under his or her supervision, has appeared.

(II) A report filed by a person listed in paragraph (c) of subsection (1) of this section shall contain an evaluation of all district and county judges in the judicial district before whom the person filing the report has appeared in his or her capacity as an attorney under contract with the office of alternate defense counsel.

(III) A report filed by a person listed in paragraph (d) of subsection (1) of this section shall contain an evaluation of all district and county judges in the judicial district in which the chief judge is appointed.
(c) A JUDICIAL EVALUATION REPORT FILED UNDER THIS SECTION SHALL BE FILED WITH THE DISTRICT COMMISSION NOT LATER THAN APRIL 1, 2008, AND NOT LATER THAN APRIL 1 OF EACH EVEN-NUMBERED YEAR THEREAFTER.

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

(I) INTEGRITY;

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

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

(IV) COMMUNICATION SKILLS;

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

(VI) PRETRIAL PRACTICES;

(VII) BONDING PRACTICES;

(VIII) SENTENCING PRACTICES;

(IX) DOCKET MANAGEMENT AND PROMPT CASE DISPOSITION;

(X) ADMINISTRATIVE SKILLS;

(XI) PUNCTUALITY;

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

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

(XIV) SERVICE TO THE LEGAL PROFESSION AND THE PUBLIC; AND
(XV) ANY OTHER CRITERIA DEEMED BY THE PERSON FILING THE
REPORT TO BE RELEVANT TO THE PERFORMANCE OF JUDICIAL DUTIES.

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

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

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

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

13-5.5-106. Recommendations on retention of justices and
judges. (1) (b) After the requirement of paragraph (a) of this subsection
(1) is met, the state commission shall make a recommendation regarding
the retention of each appellate justice or judge who declares his OR HER intent to stand for retention, which recommendation shall be stated as "retain", "do not retain", or "no opinion". A "no opinion" recommendation shall be made only when the state commission concludes that results are not sufficiently clear to make a firm recommendation and shall be accompanied by a detailed explanation. 

THE RETENTION RECOMMENDATION MADE PURSUANT TO THIS PARAGRAPH (b) SHALL APPEAR ON THE GENERAL ELECTION BALLOT NEXT TO THE JUSTICE'S OR JUDGE'S NAME.

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

(b) AFTER THE REQUIREMENT OF PARAGRAPH (a) OF THIS SUBSECTION (1.5) IS MET, THE STATE COMMISSION SHALL MAKE A
RECOMMENDATION REGARDING THE RETENTION OF EACH APPELLATE
JUSTICE OR JUDGE, WHICH RECOMMENDATION SHALL BE STATED AS
"RETAIN", "DO NOT RETAIN", OR "NO OPINION". A "NO OPINION"
RECOMMENDATION SHALL BE MADE ONLY WHEN THE STATE COMMISSION
CONCLUDES THAT RESULTS ARE NOT SUFFICIENTLY CLEAR TO MAKE A
FIRM RECOMMENDATION AND SHALL BE ACCOMPANIED BY A DETAILED
EXPLANATION.

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

(2) (b) After the requirement of paragraph (a) of this subsection
(2) is met, the district commission shall make a recommendation
regarding the retention of each district or county judge who declares his
OR HER intent to stand for retention, which recommendation shall be
stated as "retain", "do not retain", or "no opinion". A "no opinion"
recommendation shall be made only when the district commission
concludes that results are not sufficiently clear to make a firm
recommendation and shall be accompanied by a detailed explanation.

THE RETENTION RECOMMENDATION MADE PURSUANT TO THIS PARAGRAPH
(b) SHALL APPEAR ON THE GENERAL ELECTION BALLOT NEXT TO THE
JUDGE’S NAME.

(4) (a) A NARRATIVE PROFILE PREPARED BY THE DISTRICT
COMMISSION UNDER SUBSECTION (2) OR (3) OF THIS SECTION SHALL
INCLUDE A SUMMARY OF THE ASSESSMENT CONTAINED IN ANY JUDICIAL
EVALUATION REPORT FILED WITH THE DISTRICT COMMISSION PURSUANT
TO SECTION 13-5.5-105.5.
(b) Nothing in this subsection (4) shall be construed to alter the district commission's power or duty imposed by statute or rule to interview or distribute a survey to a person listed in section 13-5.5-105.5 (1) prior to the district commission's preparation of the narrative profile.

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

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

   (i) To produce and distribute to the public a narrative profile and such other information as may be permitted by the rules of the state commission concerning each appellate justice or judge subject to retention election evaluation pursuant to section 13-5.5-106 (1) or (1.5);

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

13-5.5-107. Acceptance of private or federal grants - general appropriations. (1) The state commission is authorized to accept any grants of federal or private funds made available for any purpose consistent with the provisions of this article. Any funds received pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the state commission on judicial performance cash fund, which is hereby created and referred to in this section as the "fund". The fund shall also include the amount of the increases in docket fees collected pursuant to sections 13-32-105 (1) and 42-4-1710 (4) (a),
C.R.S. Any interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund. Moneys in the fund may be expended by the state commission or a district commission, subject to annual appropriation by the general assembly, for the purposes of this article. Appropriations for the state commission and the district commissions shall be by separate line items in the annual general appropriations bill. In addition, the general assembly may make annual appropriations from the general fund for the purposes of this article.

(2) The state commission is also authorized to accept gifts, grants, and donations to pay for the costs associated with making the narrative profile, the retention recommendation, and any other information generated by the state commission or a district commission widely known to the public through the state home page and other mass communications media. Any such gifts, grants, or donations shall be transferred to the state treasurer for deposit in the fund and shall be subject to annual appropriation.

SECTION 9. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 8, 2007, if adjournment sine die is on May 9, 2007); except that, if a referendum petition is filed against this act or an item,
section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.