

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

REENGROSSED

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

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

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.**

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.

SENATE
3rd Reading Unamended
April 2, 2007

SENATE
Amended 2nd Reading
March 30, 2007

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 A
8 MAJORITY OF THE MEMBERS ELECTED TO THE SENATE. SUBJECT TO THE
9 REQUIREMENTS OF PARAGRAPH (b) OF THIS SUBSECTION (2), THE MEMBER
10 APPOINTED BY THE HOUSE OF REPRESENTATIVES PURSUANT TO SECTION 5
11 (2) (a) (II) OF ARTICLE XXIX SHALL BE APPOINTED BY THE SPEAKER OF
12 THE HOUSE OF REPRESENTATIVES WITH THE APPROVAL OF A MAJORITY OF
13 THE MEMBERS ELECTED TO THE HOUSE OF REPRESENTATIVES.

14 (b) (I) IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 5 (2)
15 (b) AND (c) OF ARTICLE XXIX, TWO MEMBERS OF THE COMMISSION SHALL
16 HAVE BEEN CONTINUOUSLY AFFILIATED WITH THE DEMOCRATIC PARTY FOR
17 AT LEAST TWO YEARS PRIOR TO APPOINTMENT TO THE COMMISSION, TWO
18 MEMBERS OF THE COMMISSION SHALL HAVE BEEN CONTINUOUSLY
19 AFFILIATED WITH THE REPUBLICAN PARTY FOR AT LEAST TWO YEARS PRIOR
20 TO APPOINTMENT TO THE COMMISSION, AND THE FIFTH AND FINAL MEMBER
21 OF THE COMMISSION SHALL HAVE BEEN CONTINUOUSLY UNAFFILIATED
22 WITH ANY POLITICAL PARTY FOR AT LEAST TWO YEARS PRIOR TO
23 APPOINTMENT TO THE COMMISSION. NOT MORE THAN ONE MEMBER OF
24 THE COMMISSION SHALL HAVE BEEN CONTINUOUSLY UNAFFILIATED WITH
25 ANY POLITICAL PARTY FOR AT LEAST TWO YEARS PRIOR TO APPOINTMENT
26 TO THE COMMISSION.

27 (II) EACH OF THE FOUR MEMBERS APPOINTED TO THE COMMISSION

1 BY THE SENATE, HOUSE OF REPRESENTATIVES, GOVERNOR, AND CHIEF
2 JUSTICE PURSUANT TO SECTION 5 (2) (a) OF ARTICLE XXIX SHALL BE
3 APPOINTED BY THE APPLICABLE APPOINTING AUTHORITY FROM AMONG A
4 LIST OF TWELVE NAMES JOINTLY SUBMITTED BY THE PRESIDENT AND
5 MINORITY LEADER OF THE SENATE AND THE SPEAKER AND MINORITY
6 LEADER OF THE HOUSE OF REPRESENTATIVES. IN ORDER TO SATISFY THE
7 REQUIREMENTS OF THIS SUBPARAGRAPH (II), THE PRESIDENT AND
8 MINORITY LEADER OF THE SENATE AND THE SPEAKER AND MINORITY
9 LEADER OF THE HOUSE OF REPRESENTATIVES SHALL EACH CONTRIBUTE
10 THREE NAMES TO THE LIST OF TWELVE NAMES. EACH OF THE THREE
11 NAMES SUBMITTED BY THE PRESIDENT, SPEAKER, AND MINORITY LEADERS
12 SHALL BE OF PERSONS AFFILIATED WITH THE SAME POLITICAL PARTY AS
13 THE PRESIDENT, SPEAKER, AND MINORITY LEADERS, AS APPLICABLE.

14 (c) THE COMMISSION MEMBERS SHALL BE APPOINTED TO
15 FOUR-YEAR TERMS; EXCEPT THAT THE FIRST MEMBER APPOINTED BY THE
16 SENATE AND THE FIRST MEMBER APPOINTED BY THE GOVERNOR SHALL
17 INITIALLY SERVE TWO-YEAR TERMS. APPOINTMENTS TO THE COMMISSION
18 SHALL BE MADE NO LATER THAN MAY 1, 2007, AND THE INITIAL TERMS OF
19 COMMISSION MEMBERS SHALL COMMENCE JULY 1, 2007.

20 (3) COMMISSION MEMBERS SHALL SERVE WITHOUT
21 COMPENSATION; EXCEPT THAT COMMISSION MEMBERS SHALL BE
22 REIMBURSED FOR THE ACTUAL AND NECESSARY EXPENSES THAT THEY
23 INCUR IN CARRYING OUT THEIR DUTIES AND RESPONSIBILITIES AS
24 COMMISSION MEMBERS.

25 (4) IN ACCORDANCE WITH THE PROVISIONS OF SECTION 5 OF
26 ARTICLE XXIX, THE POWERS AND DUTIES OF THE COMMISSION SHALL BE
27 AS FOLLOWS:

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

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

7 (II) THE COMMISSION SHALL PREPARE A RESPONSE TO A REQUEST
8 FOR AN ADVISORY OPINION FROM A PUBLIC OFFICER, MEMBER OF THE
9 GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR GOVERNMENT
10 EMPLOYEE AS TO WHETHER PARTICULAR ACTION BY SUCH OFFICER,
11 MEMBER, OFFICIAL, OR EMPLOYEE SATISFIES THE REQUIREMENTS OF
12 ARTICLE XXIX NOT MORE THAN FIFTEEN DAYS AFTER THE REQUEST IS
13 MADE TO THE COMMISSION. WHERE THE COMMISSION FAILS TO PREPARE
14 A RESPONSE TO SUCH A REQUEST WITHIN THE FIFTEEN-DAY PERIOD
15 REQUIRED BY THIS SUBPARAGRAPH (II), THE ACTION THAT IS THE SUBJECT
16 OF THE REQUEST SHALL BE DEEMED TO SATISFY THE REQUIREMENTS OF
17 ARTICLE XXIX.

18 (III) ANY PERSON WHO IS NOT A PUBLIC OFFICER, MEMBER OF THE
19 GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR GOVERNMENT
20 EMPLOYEE MAY SUBMIT A REQUEST TO THE COMMISSION FOR A LETTER
21 RULING CONCERNING WHETHER POTENTIAL CONDUCT OF THE PERSON
22 MAKING THE REQUEST SATISFIES THE REQUIREMENTS OF ARTICLE XXIX.
23 IN SUCH CASE, THE COMMISSION SHALL ISSUE A RESPONSE TO THE REQUEST
24 AS SOON AS PRACTICABLE.

25 (IV) EACH ADVISORY OPINION OR LETTER RULING, AS APPLICABLE,
26 ISSUED BY THE COMMISSION SHALL BE A PUBLIC DOCUMENT AND SHALL BE
27 PROMPTLY POSTED ON A WEBSITE THAT SHALL BE MAINTAINED BY THE

1 COMMISSION; EXCEPT THAT, IN THE CASE OF A LETTER RULING, THE
2 COMMISSION SHALL REDACT THE NAME OF THE PERSON REQUESTING THE
3 RULING OR OTHER IDENTIFYING INFORMATION BEFORE IT IS POSTED ON THE
4 WEBSITE.

5 (5) (a) THE COMMISSION SHALL DISMISS AS FRIVOLOUS ANY
6 COMPLAINT FILED UNDER ARTICLE XXIX THAT FAILS TO ALLEGE THAT A
7 PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL
8 GOVERNMENT OFFICIAL, OR GOVERNMENT EMPLOYEE HAS ACCEPTED OR
9 RECEIVED ANY GIFT OR OTHER THING OF VALUE FOR PRIVATE GAIN OR
10 PERSONAL FINANCIAL GAIN.

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

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

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

20 (6) PURSUANT TO THE PROVISIONS OF SECTION 5 (1) OF ARTICLE
21 XXIX, THE COMMISSION SHALL ADOPT REASONABLE RULES AS MAY BE
22 NECESSARY FOR THE PURPOSE OF ADMINISTERING AND ENFORCING THE
23 PROVISIONS OF ARTICLE XXIX AND ANY OTHER STANDARDS OF CONDUCT
24 AND REPORTING REQUIREMENTS AS PROVIDED BY LAW. ANY RULES SHALL
25 BE PROMULGATED IN ACCORDANCE WITH THE REQUIREMENTS OF ARTICLE
26 4 OF THIS TITLE.

27 (7) SUBJECT TO AVAILABLE APPROPRIATIONS, THE COMMISSION

1 MAY EMPLOY SUCH STAFF AS IT DEEMS NECESSARY TO ENABLE IT TO
2 CARRY OUT ITS FUNCTIONS IN ACCORDANCE WITH THE REQUIREMENTS OF
3 THIS ARTICLE AND ARTICLE XXIX.

4 (7) NO SUBPOENA REQUIRING THE ATTENDANCE OF A WITNESS OR
5 THE PRODUCTION OF DOCUMENTS SHALL BE ISSUED BY THE COMMISSION
6 UNLESS A MOTION TO ISSUE ANY SUCH SUBPOENA HAS BEEN MADE BY ONE
7 MEMBER OF THE COMMISSION AND APPROVED BY NO FEWER THAN FOUR
8 MEMBERS OF THE COMMISSION. ___

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

12 **SECTION 2. Appropriation.** (1) In addition to any other
13 appropriation, there is hereby appropriated, out of any moneys in the
14 general fund not otherwise appropriated, to the department of personnel
15 and administration, executive office, for the provision of legal services to
16 the division of administrative courts, for the fiscal year beginning July 1,
17 2007, the sum of one hundred twenty-one thousand nine hundred
18 eighty-six dollars (\$121,986), or so much thereof as may be necessary, for
19 the implementation of this act.

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

26 (3) In addition to any other appropriation, there is hereby
27 appropriated, to the department of law, for the fiscal year beginning July

1 1, 2007, the sum of one hundred twenty-one thousand nine hundred
2 eighty-six dollars (\$121,986) and 0.9 FTE, or so much thereof as may be
3 necessary, for the provision of legal services to the department of
4 personnel and administration, division of administrative courts, related to
5 the implementation of this act. Said sum shall be from cash funds exempt
6 received from the department of personnel and administration, executive
7 office, out of the appropriation made in subsection (1) of this section.

8 **SECTION 3. Safety clause.** The general assembly hereby finds,
9 determines, and declares that this act is necessary for the immediate
10 preservation of the public peace, health, and safety.