A BILL FOR AN ACT

CONCERNING THE CREATION OF A SCHOOL BOARD 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.)

The bill creates the school board ethics commission (commission) as a type 1 commission within the department of education. The commission consists of 5 members appointed by the general assembly, the governor, and the state board of education. The bill includes requirements relating to commission membership.

Any person may file a complaint alleging that a member of the commission violated the ethics code.
governing board of a school district, district charter school, institute charter school, or board of cooperative services that operates a school (board member), has violated a state statute, code, standard, or rule within the commission's jurisdiction.

The commission may hear complaints relating to alleged violations by board members of:

- The code of ethics for school board members created in the bill;
- The conduct of school board meetings;
- School board bylaws relating to the conduct of board members;
- Statutes relating to ethics in government;
- Statutes relating to open meetings;
- The "Colorado Open Records Act"; and
- Any other provisions of state law that relate to ethical codes, standards, or rules that are applicable to board members.

The bill authorizes the commission to take all actions necessary to carry out its duties, including, among others, receiving, reviewing, and investigating complaints; issuing findings of fact and conclusions of law; and imposing sanctions if violations are found. The commission shall promulgate rules relating to its duties.

The bill includes procedures relating to complaints filed with the commission. Once filed, the commission determines whether there is probable cause to sustain the complaint. The complaint and response are confidential until probable cause has been determined. If there is probable cause, the commission refers the matter to an administrative law judge for hearing and issuance of findings of fact. The commission then makes written findings of fact and conclusions of law. If a violation is found, the commission shall determine the sanction, which may include civil penalties or fines, equitable relief, censure, and the award of attorney's fees. Complainants may appeal decisions to the district court.

The commission may dismiss frivolous complaints and impose a fine of not more than $500.

The bill establishes a code of ethics for school board members.

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

   SECTION 1. In Colorado Revised Statutes, add part 6 to article 2 of title 22 as follows:

   PART 6

   SCHOOL BOARD ETHICS COMMISSION
22-2-601. Legislative declaration. (1) The general assembly finds and declares that it is essential to our representative form of government and our public education system that the conduct of members of boards of education of school districts hold the respect and confidence of the public. School board members must avoid conduct that is in violation of the public trust or that creates a justifiable impression among the public that this trust has been violated. Moreover, it is essential that there is transparency with respect to the actions of the boards of education of school districts.

(2) The general assembly further finds and declares that, to ensure and preserve public confidence, the members of boards of education of school districts should have the benefit of specific standards to guide their conduct and mechanisms to ensure the uniform maintenance of those standards. Further, the laws in place to ensure the transparency of school board actions should be enforceable in a manner that results in timely and efficient recourse for the public.

22-2-602. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "Board member" means a member of the governing board of a local education provider.

(2) "Commission" means the school board ethics commission created pursuant to this part 6.

(3) "Local education provider" means:

(a) A school district, other than a junior college district, organized and existing pursuant to law;
(b) A board of cooperative services created and operating pursuant to article 5 of this title that operates one or more public schools;
(c) A charter school authorized by a school district pursuant to part 1 of article 30.5 of this title; and
(d) An institute charter school authorized by the state charter school institute pursuant to part 5 of article 30.5 of this title.

22-2-603. School board ethics commission - creation - membership. (1) There is hereby created in the department the school board ethics commission which exercises its powers and performs its duties and functions as if it were transferred to the department by a type 1 transfer.

(2) (a) The commission shall consist of five members appointed in the following manner and order:
(I) One member appointed by the president of the senate;
(II) One member appointed by the speaker of the house of representatives;
(III) Two members appointed by the governor; and
(IV) One member appointed by the majority vote of the state board.

(b) No more than two members appointed to the commission shall be affiliated with the same political party.

(c) Commission members serve four-year terms; except that the first member appointed by the president of the senate and the first member appointed by the speaker of the house of representatives shall serve two-year terms. Initial
APPOINTMENTS TO THE COMMISSION SHALL BE MADE NO LATER THAN SEPTEMBER 1, 2016, AND THE INITIAL TERMS OF COMMISSION MEMBERS SHALL COMMENCE OCTOBER 15, 2016.

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

(e) THE COMMISSION SHALL ELECT ONE OF ITS MEMBERS BY MAJORITY VOTE TO SERVE AS CHAIR OF THE COMMISSION.

22-2-604. Commission powers - duties - rules. (1) The commission's jurisdiction extends to alleged violations of:

(a) The code of ethics for school board members pursuant to section 22-32-107.5;

(b) The conduct of school board meetings pursuant to section 22-32-108;

(c) School district board of education bylaws relating to the conduct of school board members created pursuant to section 22-32-109;

(d) The provisions of article 18 of title 24, C.R.S.;

(e) Part 4 of article 6 of title 24, C.R.S., relating to open meetings;

(f) The "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S.;

(g) Any other provisions of this title that relate to ethical codes, rules, or standards for school board members;

and

(h) Any other provisions of state law that relate to
ETHICAL CODES, STANDARDS, OR RULES THAT ARE APPLICABLE TO SCHOOL BOARD MEMBERS.

(2) THE COMMISSION HAS THE POWER TO TAKE ALL ACTIONS NECESSARY TO CARRY OUT THE PROVISIONS OF THIS PART 6, INCLUDING:

(a) RECEIVING AND REVIEWING COMPLAINTS;

(b) INVESTIGATING COMPLAINTS;

(c) COMPELLING THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF DOCUMENTS THROUGH THE USE OF SUBPOENAS ISSUED BY THE COMMISSION BY A MAJORITY VOTE OF COMMISSION MEMBERS;

(d) HOLDING HEARINGS;

(e) ISSUING FINDINGS OF FACT AND CONCLUSIONS OF LAW; AND

(f) IMPOSING SANCTIONS.

(3) THE COMMISSION MAY ISSUE ADVISORY OPINIONS RELATING TO PROPOSED CONDUCT WITHIN THE COMMISSION'S JURISDICTION.

(4) THE COMMISSION SHALL PROMULGATE REASONABLE RULES NECESSARY TO CARRY OUT THE PURPOSES OF THIS PART 6, INCLUDING RULES RELATING TO THE RECEIPT, REVIEW, AND DETERMINATION OF COMPLAINTS, THE ISSUANCE OF ADVISORY OPINIONS, AND THE IMPOSITION OF SANCTIONS. THE COMMISSION SHALL PROMULGATE RULES IN ACCORDANCE WITH SECTION 24-4-103, C.R.S.

22-2-605. Complaint procedures. (1) ANY PERSON, INCLUDING A MEMBER OF THE COMMISSION, MAY FILE A COMPLAINT ALLEGING THAT A SCHOOL BOARD MEMBER HAS VIOLATED A STATUTE, CODE, STANDARD, OR RULE WITHIN THE COMMISSION'S JURISDICTION ESTABLISHED IN SECTION 22-2-604 BY SUBMITTING THE COMPLAINT TO THE COMMISSION IN A MANNER PRESCRIBED BY THE COMMISSION. THE COMMISSION SHALL NOT ACCEPT A COMPLAINT THAT HAS NOT BEEN SIGNED BY THE
COMPLAINANT UNDER OATH. IF A MEMBER OF THE COMMISSION SUBMITS
THE COMPLAINT, THE MEMBER SHALL NOT PARTICIPATE IN ANY
SUBSEQUENT PROCEEDINGS ON THAT COMPLAINT IN THE CAPACITY OF A
COMMISSION MEMBER.

(2) UPON RECEIPT OF A COMPLAINT, THE COMMISSION SHALL
SERVE A COPY OF THE COMPLAINT ON EACH SCHOOL BOARD MEMBER
NAMED IN THE COMPLAINT AND PROVIDE EACH NAMED SCHOOL BOARD
MEMBER WITH THE OPPORTUNITY TO SUBMIT A WRITTEN STATEMENT
UNDER OATH. THE COMMISSION SHALL THEREAFTER DECIDE BY MAJORITY
VOTE WHETHER PROBABLE CAUSE EXISTS TO SUPPORT THE ALLEGATIONS
IN THE COMPLAINT. IF THE COMMISSION DECIDES THAT PROBABLE CAUSE
DOES NOT EXIST, IT SHALL DISMISS THE COMPLAINT AND NOTIFY THE
COMPLAINANT AND ANY SCHOOL BOARD MEMBER NAMED IN THE
COMPLAINT. THE DISMISSAL CONSTITUTES FINAL COMMISSION ACTION.

(3) IF THE COMMISSION DETERMINES THAT PROBABLE CAUSE
EXISTS, THE COMMISSION SHALL REFER THE MATTER TO THE OFFICE OF
ADMINISTRATIVE COURTS CREATED PURSUANT TO SECTION 24-30-1001,
C.R.S., FOR A HEARING TO BE CONDUCTED IN ACCORDANCE WITH SECTION
24-4-105, C.R.S., OF THE "STATE ADMINISTRATIVE PROCEDURE ACT",
AND NOTIFY THE COMPLAINANT AND EACH SCHOOL BOARD MEMBER
NAMED IN THE COMPLAINT OF THE REFERRAL. THE COMPLAINT AND THE
RESPONSE TO THE COMPLAINT ARE CONFIDENTIAL UNTIL THE COMMISSION
HAS DETERMINED THAT PROBABLE CAUSE EXISTS TO SUPPORT THE
ALLEGATIONS IN THE COMPLAINT.

(4) IN THE DETERMINATION OF THE COMPLAINT, THE COMPLAINANT
BEARS THE BURDEN OF PROVING THE ALLEGATION BY A PREPONDERANCE
OF THE EVIDENCE, UNLESS THE STATUTE SETTING FORTH THE CONDUCT
THAT HAS ALLEGEDLY BEEN VIOLATED REQUIRES A HIGHER BURDEN OF PROOF.


(7) THE DECISION OF THE COMMISSION CONSTITUTES FINAL AGENCY ACTION THAT IS APPEALABLE TO THE DISTRICT COURT.

(8) IF PRIOR TO THE HEARING THE COMMISSION DETERMINES, BY MAJORITY VOTE, THAT THE COMPLAINT IS FRIVOLOUS, THE COMMISSION MAY IMPOSE ON THE COMPLAINANT A FINE NOT TO EXCEED FIVE HUNDRED DOLLARS.

(9) THE COMMISSION SHALL NOT PROCESS ANY COMPLAINT, ISSUE A FINAL RULING, OR ISSUE ANY ADVISORY OPINION ON A MATTER
Actually pending in any court of law.

(10) A school board member may request an advisory opinion from the commission as to whether a proposed activity or conduct would, in the commission's opinion, violate a statute, code, standard, or rule within the commission's jurisdiction. Advisory opinions shall not be made public unless the commission, by majority vote, directs that the opinion be made public. Public advisory opinions shall not include the name of the school board member or the local education provider.

SECTION 2. In Colorado Revised Statutes, 24-1-115, add (17) as follows:

24-1-115. Department of education - creation. (17) The department of education shall include the school board ethics commission created in section 22-2-603, C.R.S., and its powers, duties, and functions, as if the board were transferred by a type 1 transfer to the department of education.

SECTION 3. In Colorado Revised Statutes, add 22-32-107.5 as follows:

22-32-107.5. Code of ethics for school board members. A school board member shall comply with the following code of ethics for school board members:

1. I will uphold and enforce all laws, rules, and regulations of the state board of education and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures;

2. I will make decisions in terms of the educational
WELFARE OF CHILDREN AND WILL SEEK TO DEVELOP AND MAINTAIN
PUBLIC SCHOOLS THAT MEET THE INDIVIDUAL NEEDS OF ALL
CHILDREN REGARDLESS OF THEIR ABILITY, RACE, CREED, SEX, OR
SOCIAL STANDING;

3. I WILL CONFINCE MY BOARD ACTION TO POLICY MAKING,
PLANNING, AND APPRAISAL, AND I WILL HELP TO FRAME POLICIES
AND PLANS ONLY AFTER THE BOARD HAS CONSULTED THOSE WHO
WILL BE AFFECTED BY THEM;

4. I WILL CARRY OUT MY RESPONSIBILITY, NOT TO ADMINISTER THE
SCHOOLS, BUT, TOGETHER WITH MY FELLOW BOARD MEMBERS, TO
SEE THAT THEY ARE WELL RUN;

5. I WILL RECOGNIZE THAT AUTHORITY RESTS WITH THE BOARD OF
EDUCATION AND WILL MAKE NO PERSONAL PROMISES NOR TAKE
ANY PRIVATE ACTION THAT MAY COMPROMISE THE BOARD;

6. I WILL REFUSE TO SURRENDER MY INDEPENDENT JUDGMENT TO
SPECIAL INTEREST OR PARTISAN POLITICAL GROUPS OR TO USE THE
SCHOOLS FOR PERSONAL GAIN OR FOR THE GAIN OF FRIENDS;

7. I WILL HOLD CONFIDENTIAL ALL MATTERS PERTAINING TO THE
SCHOOLS WHICH, IF DISCLOSED, WOULD NEEDLESSLY INJURE
INDIVIDUALS OR THE SCHOOLS. IN ALL OTHER MATTERS, I WILL
PROVIDE ACCURATE INFORMATION, AND, IN CONCERT WITH MY
FELLOW BOARD MEMBERS, INTERPRET TO THE STAFF THE
ASPIRATIONS OF THE COMMUNITY FOR ITS SCHOOL;

8. I WILL VOTE TO HIRE OR APPOINT THE BEST QUALIFIED
PERSONNEL AVAILABLE; AND

9. I WILL SUPPORT AND PROTECT SCHOOL PERSONNEL IN PROPER
PERFORMANCE OF THEIR DUTIES.
SECTION 4. Act subject to petition - effective date. This act
takes effect at 12:01 a.m. on the day following the expiration of the
ninety-day period after final adjournment of the general assembly (August
10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
referendum petition is filed pursuant to section 1 (3) of article V of the
state constitution against this act or an item, section, or part of this act
within such period, then the act, item, section, or part will not take effect
unless approved by the people at the general election to be held in
November 2016 and, in such case, will take effect on the date of the
official declaration of the vote thereon by the governor.