

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0953.01 Brita Darling x2241

SENATE BILL 16-101

SENATE SPONSORSHIP

Kerr,

HOUSE SPONSORSHIP

Kraft-Tharp,

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 CONCERNING THE CREATION OF A SCHOOL BOARD ETHICS
102 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

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.

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.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 6 to article
3 2 of title 22 as follows:

4 PART 6

5 SCHOOL BOARD ETHICS COMMISSION

1 **22-2-601. Legislative declaration.** (1) THE GENERAL ASSEMBLY
2 FINDS AND DECLARES THAT IT IS ESSENTIAL TO OUR REPRESENTATIVE
3 FORM OF GOVERNMENT AND OUR PUBLIC EDUCATION SYSTEM THAT THE
4 CONDUCT OF MEMBERS OF BOARDS OF EDUCATION OF SCHOOL DISTRICTS
5 HOLD THE RESPECT AND CONFIDENCE OF THE PUBLIC. SCHOOL BOARD
6 MEMBERS MUST AVOID CONDUCT THAT IS IN VIOLATION OF THE PUBLIC
7 TRUST OR THAT CREATES A JUSTIFIABLE IMPRESSION AMONG THE PUBLIC
8 THAT THIS TRUST HAS BEEN VIOLATED. MOREOVER, IT IS ESSENTIAL THAT
9 THERE IS TRANSPARENCY WITH RESPECT TO THE ACTIONS OF THE BOARDS
10 OF EDUCATION OF SCHOOL DISTRICTS.

11 (2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT,
12 TO ENSURE AND PRESERVE PUBLIC CONFIDENCE, THE MEMBERS OF BOARDS
13 OF EDUCATION OF SCHOOL DISTRICTS SHOULD HAVE THE BENEFIT OF
14 SPECIFIC STANDARDS TO GUIDE THEIR CONDUCT AND MECHANISMS TO
15 ENSURE THE UNIFORM MAINTENANCE OF THOSE STANDARDS. FURTHER,
16 THE LAWS IN PLACE TO ENSURE THE TRANSPARENCY OF SCHOOL BOARD
17 ACTIONS SHOULD BE ENFORCEABLE IN A MANNER THAT RESULTS IN TIMELY
18 AND EFFICIENT RECOURSE FOR THE PUBLIC.

19 **22-2-602. Definitions.** AS USED IN THIS PART 6, UNLESS THE
20 CONTEXT OTHERWISE REQUIRES:

21 (1) "BOARD MEMBER" MEANS A MEMBER OF THE GOVERNING
22 BOARD OF A LOCAL EDUCATION PROVIDER.

23 (2) "COMMISSION" MEANS THE SCHOOL BOARD ETHICS
24 COMMISSION CREATED PURSUANT TO THIS PART 6.

25 (3) "LOCAL EDUCATION PROVIDER" MEANS:

26 (a) A SCHOOL DISTRICT, OTHER THAN A JUNIOR COLLEGE DISTRICT,
27 ORGANIZED AND EXISTING PURSUANT TO LAW;

1 (b) A BOARD OF COOPERATIVE SERVICES CREATED AND OPERATING
2 PURSUANT TO ARTICLE 5 OF THIS TITLE THAT OPERATES ONE OR MORE
3 PUBLIC SCHOOLS;

4 (c) A CHARTER SCHOOL AUTHORIZED BY A SCHOOL DISTRICT
5 PURSUANT TO PART 1 OF ARTICLE 30.5 OF THIS TITLE; AND

6 (d) AN INSTITUTE CHARTER SCHOOL AUTHORIZED BY THE STATE
7 CHARTER SCHOOL INSTITUTE PURSUANT TO PART 5 OF ARTICLE 30.5 OF
8 THIS TITLE.

9 **22-2-603. School board ethics commission - creation -**
10 **membership.** (1) THERE IS HEREBY CREATED IN THE DEPARTMENT THE
11 SCHOOL BOARD ETHICS COMMISSION WHICH EXERCISES ITS POWERS AND
12 PERFORMS ITS DUTIES AND FUNCTIONS AS IF IT WERE TRANSFERRED TO THE
13 DEPARTMENT BY A **TYPE I** TRANSFER.

14 (2) (a) THE COMMISSION SHALL CONSIST OF FIVE MEMBERS
15 APPOINTED IN THE FOLLOWING MANNER AND ORDER:

16 (I) ONE MEMBER APPOINTED BY THE PRESIDENT OF THE SENATE;

17 (II) ONE MEMBER APPOINTED BY THE SPEAKER OF THE HOUSE OF
18 REPRESENTATIVES;

19 (III) TWO MEMBERS APPOINTED BY THE GOVERNOR; AND

20 (IV) ONE MEMBER APPOINTED BY THE MAJORITY VOTE OF THE
21 STATE BOARD.

22 (b) NO MORE THAN TWO MEMBERS APPOINTED TO THE COMMISSION
23 SHALL BE AFFILIATED WITH THE SAME POLITICAL PARTY.

24 (c) COMMISSION MEMBERS SERVE FOUR-YEAR TERMS; EXCEPT
25 THAT THE FIRST MEMBER APPOINTED BY THE PRESIDENT OF THE SENATE
26 AND THE FIRST MEMBER APPOINTED BY THE SPEAKER OF THE HOUSE OF
27 REPRESENTATIVES SHALL SERVE TWO-YEAR TERMS. INITIAL

1 APPOINTMENTS TO THE COMMISSION SHALL BE MADE NO LATER THAN
2 SEPTEMBER 1, 2016, AND THE INITIAL TERMS OF COMMISSION MEMBERS
3 SHALL COMMENCE OCTOBER 15, 2016.

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

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

10 **22-2-604. Commission powers - duties - rules.** (1) THE
11 COMMISSION'S JURISDICTION EXTENDS TO ALLEGED VIOLATIONS OF:

12 (a) THE CODE OF ETHICS FOR SCHOOL BOARD MEMBERS PURSUANT
13 TO SECTION 22-32-107.5;

14 (b) THE CONDUCT OF SCHOOL BOARD MEETINGS PURSUANT TO
15 SECTION 22-32-108;

16 (c) SCHOOL DISTRICT BOARD OF EDUCATION BYLAWS RELATING TO
17 THE CONDUCT OF SCHOOL BOARD MEMBERS CREATED PURSUANT TO
18 SECTION 22-32-109;

19 (d) THE PROVISIONS OF ARTICLE 18 OF TITLE 24, C.R.S.;

20 (e) PART 4 OF ARTICLE 6 OF TITLE 24, C.R.S., RELATING TO OPEN
21 MEETINGS;

22 (f) THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72
23 OF TITLE 24, C.R.S.;

24 (g) ANY OTHER PROVISIONS OF THIS TITLE THAT RELATE TO
25 ETHICAL CODES, RULES, OR STANDARDS FOR SCHOOL BOARD MEMBERS;
26 AND

27 (h) ANY OTHER PROVISIONS OF STATE LAW THAT RELATE TO

1 ETHICAL CODES, STANDARDS, OR RULES THAT ARE APPLICABLE TO SCHOOL
2 BOARD MEMBERS.

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

5 (a) RECEIVING AND REVIEWING COMPLAINTS;

6 (b) INVESTIGATING COMPLAINTS;

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

10 (d) HOLDING HEARINGS;

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

12 (f) IMPOSING SANCTIONS.

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

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

21 **22-2-605. Complaint procedures.** (1) ANY PERSON, INCLUDING
22 A MEMBER OF THE COMMISSION, MAY FILE A COMPLAINT ALLEGING THAT
23 A SCHOOL BOARD MEMBER HAS VIOLATED A STATUTE, CODE, STANDARD,
24 OR RULE WITHIN THE COMMISSION'S JURISDICTION ESTABLISHED IN
25 SECTION 22-2-604 BY SUBMITTING THE COMPLAINT TO THE COMMISSION
26 IN A MANNER PRESCRIBED BY THE COMMISSION. THE COMMISSION SHALL
27 NOT ACCEPT A COMPLAINT THAT HAS NOT BEEN SIGNED BY THE

1 COMPLAINANT UNDER OATH. IF A MEMBER OF THE COMMISSION SUBMITS
2 THE COMPLAINT, THE MEMBER SHALL NOT PARTICIPATE IN ANY
3 SUBSEQUENT PROCEEDINGS ON THAT COMPLAINT IN THE CAPACITY OF A
4 COMMISSION MEMBER.

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

15 (3) IF THE COMMISSION DETERMINES THAT PROBABLE CAUSE
16 EXISTS, THE COMMISSION SHALL REFER THE MATTER TO THE OFFICE OF
17 ADMINISTRATIVE COURTS CREATED PURSUANT TO SECTION 24-30-1001,
18 C.R.S., FOR A HEARING TO BE CONDUCTED IN ACCORDANCE WITH SECTION
19 24-4-105, C.R.S., OF THE "STATE ADMINISTRATIVE PROCEDURE ACT",
20 AND NOTIFY THE COMPLAINANT AND EACH SCHOOL BOARD MEMBER
21 NAMED IN THE COMPLAINT OF THE REFERRAL. THE COMPLAINT AND THE
22 RESPONSE TO THE COMPLAINT ARE CONFIDENTIAL UNTIL THE COMMISSION
23 HAS DETERMINED THAT PROBABLE CAUSE EXISTS TO SUPPORT THE
24 ALLEGATIONS IN THE COMPLAINT.

25 (4) IN THE DETERMINATION OF THE COMPLAINT, THE COMPLAINANT
26 BEARS THE BURDEN OF PROVING THE ALLEGATION BY A PREPONDERANCE
27 OF THE EVIDENCE, UNLESS THE STATUTE SETTING FORTH THE CONDUCT

1 THAT HAS ALLEGEDLY BEEN VIOLATED REQUIRES A HIGHER BURDEN OF
2 PROOF.

3 (5) UPON COMPLETION OF THE HEARING AND REVIEW OF THE
4 ADMINISTRATIVE LAW JUDGE'S FACTUAL FINDINGS, THE COMMISSION, BY
5 MAJORITY VOTE, SHALL DETERMINE WHETHER THE CONDUCT COMPLAINED
6 OF CONSTITUTES A VIOLATION OF THE STATUTE, CODE, STANDARD, OR
7 RULE AND WHETHER THE NAMED SCHOOL BOARD MEMBER APPROVED OF
8 OR PARTICIPATED IN THE VIOLATION, OR WHETHER THE COMPLAINT
9 SHOULD BE DISMISSED. THE COMMISSION SHALL STATE IN WRITING ITS
10 FINDINGS OF FACT AND CONCLUSIONS OF LAW.

11 (6) IF A VIOLATION IS FOUND, THE COMMISSION SHALL, BY
12 MAJORITY VOTE, DETERMINE THE APPROPRIATE SANCTION FOR THE
13 SCHOOL BOARD MEMBER. THE SANCTION IMPOSED BY THE COMMISSION
14 MAY INCLUDE A CIVIL PENALTY OR FINE IN AN AMOUNT DETERMINED BY
15 THE COMMISSION, EQUITABLE RELIEF, THE VOIDING OF AN ACTION,
16 CENSURE, AND THE PAYMENT OF THE PREVAILING PARTY'S ATTORNEY'S
17 FEES. THE SCHOOL BOARD MEMBER SANCTIONED SHALL BE PERSONALLY
18 LIABLE FOR ANY MONETARY SANCTIONS OR ORDER FOR THE PAYMENT OF
19 THE PREVAILING PARTY'S ATTORNEY FEES.

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

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

26 (9) THE COMMISSION SHALL NOT PROCESS ANY COMPLAINT, ISSUE
27 A FINAL RULING, OR ISSUE ANY ADVISORY OPINION ON A MATTER

1 ACTUALLY PENDING IN ANY COURT OF LAW.

2 (10) A SCHOOL BOARD MEMBER MAY REQUEST AN ADVISORY
3 OPINION FROM THE COMMISSION AS TO WHETHER A PROPOSED ACTIVITY OR
4 CONDUCT WOULD, IN THE COMMISSION'S OPINION, VIOLATE A STATUTE,
5 CODE, STANDARD, OR RULE WITHIN THE COMMISSION'S JURISDICTION.
6 ADVISORY OPINIONS SHALL NOT BE MADE PUBLIC UNLESS THE
7 COMMISSION, BY MAJORITY VOTE, DIRECTS THAT THE OPINION BE MADE
8 PUBLIC. PUBLIC ADVISORY OPINIONS SHALL NOT INCLUDE THE NAME OF
9 THE SCHOOL BOARD MEMBER OR THE LOCAL EDUCATION PROVIDER.

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

12 **24-1-115. Department of education - creation.** (17) THE
13 DEPARTMENT OF EDUCATION SHALL INCLUDE THE SCHOOL BOARD ETHICS
14 COMMISSION CREATED IN SECTION 22-2-603, C.R.S., AND ITS POWERS,
15 DUTIES, AND FUNCTIONS, AS IF THE BOARD WERE TRANSFERRED BY A **TYPE**
16 **1** TRANSFER TO THE DEPARTMENT OF EDUCATION.

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

19 **22-32-107.5. Code of ethics for school board members.** A
20 SCHOOL BOARD MEMBER SHALL COMPLY WITH THE FOLLOWING CODE OF
21 ETHICS FOR SCHOOL BOARD MEMBERS:

22 1. I WILL UPHOLD AND ENFORCE ALL LAWS, RULES, AND
23 REGULATIONS OF THE STATE BOARD OF EDUCATION AND COURT
24 ORDERS PERTAINING TO SCHOOLS. DESIRED CHANGES SHALL BE
25 BROUGHT ABOUT ONLY THROUGH LEGAL AND ETHICAL
26 PROCEDURES;

27 2. I WILL MAKE DECISIONS IN TERMS OF THE EDUCATIONAL

1 WELFARE OF CHILDREN AND WILL SEEK TO DEVELOP AND MAINTAIN
2 PUBLIC SCHOOLS THAT MEET THE INDIVIDUAL NEEDS OF ALL
3 CHILDREN REGARDLESS OF THEIR ABILITY, RACE, CREED, SEX, OR
4 SOCIAL STANDING;

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

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

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

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

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

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

26 9. I WILL SUPPORT AND PROTECT SCHOOL PERSONNEL IN PROPER
27 PERFORMANCE OF THEIR DUTIES.

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