



**Colorado  
Legislative  
Council  
Staff**

**HB17-1303**

**FINAL  
FISCAL NOTE**

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

<b>Drafting Number:</b> LLS 17-0591	<b>Date:</b> September 7, 2017
<b>Prime Sponsor(s):</b> Rep. Wist; Lee	<b>Bill Status:</b> Signed into Law
Sen. Gardner; Kagan	<b>Fiscal Analyst:</b> Chris Creighton (303-866-5834)

**BILL TOPIC:** COMMISSIONS ON JUDICIAL PERFORMANCE EVALUATION

<b>Fiscal Impact Summary</b>	<b>FY 2017-2018</b>	<b>FY 2018-2019</b>
<b>State Revenue</b>	Potential minimal increase.	
Cash Funds		
<b>State Expenditures</b>	<b>at least \$24,500</b>	<b>at least \$24,500</b>
General Fund	at least 24,500	at least 24,500
<b>Appropriation Required:</b> \$24,500 - Judicial Department (FY 2017-18).		
<b>Future Year Impacts:</b> Ongoing expenditure and workload increase.		

**Summary of Legislation**

This bill repeals and reenacts, with amendments, statutes related to state and district commissions on judicial performance. While some of the statutes are streamlined and common commission duties are combined, the following statutory changes are made:

***Commission membership and appointment.***

- The current commission composition of ten members and procedures for the appointment of members remains until January 31, 2019.
- After January 31, 2019, the terms of certain members expire and new appointment procedures begin. Additionally, the state commission increases to 11 members.

***Judicial evaluations.***

- Senior retired judges who have returned to temporary judicial services are added to the list of judges that are evaluated.
- The designations currently used for judicial performance recommendations are changed from "retain," "do not retain," and "no opinion" to "meets performance standard" and "does not meet performance standard." A majority vote is required by the commission to use the "does not meet performance standard" designation.
- The appropriate state or district commission must conduct an initial evaluation of each judge or justice within the first two years of his or her appointment to the bench.

- State or district commissions are given the discretion to recommend that a justice or judge receive an individual judicial improvement plan which is to be developed by the appropriate chief judge or justice after completion of an evaluation.

### ***Data gathering and reporting.***

- The state commission is required to develop rules, guidelines, and procedures to make surveys for persons affected by justices and judges readily available; allow opportunities to review the surveys; and to make them available to the public.
- The state commission is also authorized to develop rules, guidelines, and procedures for uniform evaluation procedures, system-wide judicial training programs, continuous data collection, and a system-wide volunteer courtroom observer program. The state commission may retain independent legal counsel to review any adopted rules, guidelines, or procedures. Such rules, guidelines, and procedures are also subject to judicial review.
- The state commission must gather statewide data on justices and judges eligible for retention and the number of performance evaluations performed. This data must be posted on the state commission website 30 days prior to each retention election.
- Beginning January 2019, the state commission must report every two years on the activities of the state and district commissions to the General Assembly as part of the Judicial Department's SMART Act hearing.

### **Background**

In 1966, a constitutional amendment was passed to repeal the election of judges and to enact a system of judicial nominating commissions, Governor-appointed judges, and retention elections for justices and judges. Retention elections are held during general elections every two years, with individual justices and judges up for retention every four years. The Office of Judicial Performance Evaluation is responsible for developing and administering the judicial performance evaluation system for evaluating judges and justices seeking retention. The office is supported by the Judicial Performance Cash Fund which is funded from a \$5 docket fee on all district court criminal actions, a \$3 docket fee on all county court criminal actions, and a \$3 docket fee on certain traffic infractions. Beginning in FY 2014-15, due to declining filing fee revenue, a General Fund appropriation of \$290,000 was approved for the office. These funds are used to cover the cost surveying attorneys and non-attorneys about judges before whom they have appeared.

The State Commission on Judicial Performance currently consists of 10 volunteer members that promulgate rules and evaluate Supreme Court justices and Court of Appeals judges. A local district commission consisting of 10 volunteer members exists for each of the state's 22 judicial districts. District commissions evaluate district and county judges.

### **State Revenue**

Beginning in FY 2017-18, by making state commission rules, guidelines, and procedures subject to judicial review, this bill potentially increases state cash fund revenue from filing fees credited to the Judicial Stabilization Cash Fund. Any revenue received is expected to be minimal.

## State Expenditures

**This bill increases state General Fund expenditures by at least \$24,500 per year in the Office of Judicial Performance Evaluation in the Judicial Department beginning in FY 2017-18.** Additional future costs will also be incurred, as discussed below.

**Senior judge surveys.** Costs are increased beginning in FY 2017-18 to conduct an initial performance evaluation of each senior judge that returns to the bench between their initial appointment and 45 days prior to the expiration of their contract. To properly evaluate each senior judge, surveys of attorneys and non-attorneys who have appeared before the judge must be conducted on an ongoing basis. Adding the senior judges to the current performance evaluation survey contract increases costs by \$24,500 annually.

**Public survey results.** This bill requires the development of guidelines and procedures to make survey results available to the general public, which will increase workload in the Office of Judicial Performance Evaluation. Actual costs will depend on the frequency at which survey results are provided and the exact survey procedures developed. It is assumed any additional funding needed will be requested through the annual budget process as these costs are known.

**Judicial training programs.** This bill grants all state and district commissions the power to develop system-wide judicial training programs. Workload will increase for the state commission to work with district commissions and to review judicial evaluations to identify system-wide judicial performance issues. Once identified, recommendations for the development of system-wide training will be made and funding for this training will be requested through the annual budget process.

**Volunteer courtroom observer program.** This bill creates the volunteer courtroom observer program which increases Office of Judicial Performance Evaluation workload and costs to train the volunteers. At this time the number of volunteer courtroom observers is unknown; therefore, the exact cost has not been estimated. Additional appropriations, once known, will be requested through the annual budget process, if needed.

**Rules, guidelines, and procedures.** This bill authorizes the state commission to retain independent legal counsel to review judicial review rules, guidelines, and procedures. To the extent that independent counsel is retained, Office of Judicial Performance Evaluation costs will increase. Additionally, state commission rules, guidelines, and procedures are subject to judicial review which increases trial court workload in the Judicial Department. These workload increases are expected to be minimal. Should additional appropriations be needed by either the Office of Judicial Performance Evaluation or the Judicial Department, they will be requested through the annual budget process.

**SMART Act reporting.** Beginning in FY 2018-19 and continuing every two years, workload increases for the state commission to report on the activities of the commissions to the General Assembly as part of the Judicial Department's SMART Act hearing. This increase in workload can be accomplished within existing appropriations.

## Effective Date

This bill was signed into law by the Governor on June 5, 2017, and became effective August 9, 2017.

**State Appropriations**

For FY 2017-18, this bill requires and includes a General Fund appropriation of \$24,500 to the Judicial Department.

**State and Local Government Contacts**

Counties      District Attorneys      Information Technology      Judicial