

CHAPTER 284

COURTS

HOUSE BILL 97-1037

BY REPRESENTATIVES T. Williams, Bacon, Gotlieb, Sullivant, and Tate;
also SENATORS Matsunaka, Hopper, and Perlmutter.

AN ACT

CONCERNING COMMISSIONS THAT EVALUATE JUDICIAL PERFORMANCE.

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

SECTION 1. 13-5.5-101, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

13-5.5-101. Legislative declaration. The general assembly hereby finds and declares that it is in the public interest to establish a system of evaluating judicial performance to provide persons voting on the retention of justices and judges with fair, responsible, and constructive information about judicial performance and to provide justices, ~~and~~ judges AND MAGISTRATES with useful information concerning their own performances. The general assembly further finds and declares that the evaluation of judicial performance should be conducted statewide and within each judicial district using uniform criteria and procedures established by a state commission on judicial performance pursuant to the provisions of this article.

SECTION 2. 13-5.5-102 (1) (a) and (1) (b), Colorado Revised Statutes, 1987 Repl. Vol., as amended, are amended to read:

13-5.5-102. State commission on judicial performance. (1) (a) 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

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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 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 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) Any vacancy on the state commission shall be filled by the original appointing authority, but no member shall serve more than two FULL terms PLUS ANY BALANCE REMAINING ON AN UNEXPIRED TERM IF THE INITIAL APPOINTMENT WAS TO FILL A VACANCY. ~~except that, if the appointing authority has not made an appointment within forty-five days of the vacancy,~~ WITHIN FIVE DAYS AFTER A VACANCY ARISES ON THE STATE COMMISSION, the state commission shall notify the appointing authority OF THE VACANCY, ~~that it has not made the appointment~~ and the appointing authority shall make ~~the~~ AN appointment within ~~the next thirty~~ FORTY-FIVE days AFTER THE DATE OF THE VACANCY. ~~from a list or pool of qualified, interested citizens which has been compiled by the appointing authority. The initial term of any member appointed to fill a vacancy created by the failure of any member of the state commission to complete such member's term shall expire when the term of the departed member would otherwise have expired.~~ IF THE ORIGINAL APPOINTING AUTHORITY FAILS TO MAKE THE APPOINTMENT, OR APPOINTMENTS IF MORE THAN ONE VACANCY, WITHIN FORTY-FIVE DAYS AFTER THE DATE OF THE VACANCY, THE STATE COMMISSION SHALL MAKE THE APPOINTMENT OR APPOINTMENTS. Justices and judges actively performing judicial duties may not be appointed to serve on the state commission. Retired justices and judges are eligible to be appointed as attorney members; except that no retired justice or judge may be assigned or appointed to perform judicial duties while serving on the state commission.

SECTION 3. 13-5.5-103 (1) (b), (1) (c), (1) (e), and (1) (i), Colorado Revised Statutes, 1987 Repl. Vol., as amended, are amended, and the said 13-5.5-103 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, 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:

(b) To develop ~~lawyer and juror~~ surveys FOR LAWYERS, JURORS, LITIGANTS, LAW ENFORCEMENT PERSONNEL, ATTORNEYS WITHIN THE DISTRICT ATTORNEY'S AND PUBLIC DEFENDER'S OFFICES, EMPLOYEES OF LOCAL DEPARTMENTS OF SOCIAL SERVICES, AND VICTIMS OF CRIMES, AS DEFINED IN SECTION 24-4.1-302 (5), ~~and then~~ determine the STATISTICAL validity of completed surveys, REPORT TO THE DISTRICT COMMISSIONS ON THE STATISTICAL VALIDITY OF THE SURVEYS FOR THEIR DISTRICT, AND SPECIFY WHEN AND HOW STATISTICALLY INVALID SURVEYS MAY BE USED and to recommend judicial performance evaluations by peers, chief judges, court personnel,

and others who have direct and continuing contact with justices and judges;

(c) To prepare alternatives to lawyer and juror surveys where sample populations are inadequate to produce valid results;

(d.5) TO DEVELOP CRITERIA AND STANDARDS THAT ARE TO BE UTILIZED IN DETERMINING WHETHER TO RECOMMEND RETENTION;

(e) To develop guidelines ~~in conjunction with the press~~, for disseminating and publishing the results of judicial performance evaluations; ~~in narrative form~~;

(i) To produce and distribute to the public a narrative profile ~~of~~ 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;

(m) TO FILL VACANCIES ON THE STATE COMMISSION ON JUDICIAL PERFORMANCE PURSUANT TO SECTION 13-5.5-102 (1) (b) OR ON A DISTRICT COMMISSION ON JUDICIAL PERFORMANCE PURSUANT TO SECTION 13-5.5-104 (1) (b).

SECTION 4. 13-5.5-104 (1) (a) and (1) (b), Colorado Revised Statutes, 1987 Repl. Vol., as amended, are amended to read:

13-5.5-104. District commission on judicial performance. (1) (a) 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.

(b) Any vacancy on the district commission shall be filled by the original appointing authority, but no member shall serve more than two FULL terms PLUS ANY BALANCE REMAINING ON AN UNEXPIRED TERM IF THE INITIAL APPOINTMENT WAS TO FILL A VACANCY. ~~except that, if the appointing authority has not made an appointment within forty-five days of the vacancy;~~ WITHIN FIVE DAYS AFTER A VACANCY ARISES ON A DISTRICT COMMISSION, the district commission shall notify the appointing authority AND THE STATE COMMISSION OF THE VACANCY, ~~that it has not made the appointment~~ and the appointing authority shall make ~~the~~ AN appointment within ~~the~~ next thirty FORTY-FIVE days ~~from a list or pool of qualified, interested citizens which has been compiled by the appointing authority.~~ The initial term of any member appointed to fill a vacancy created by the failure of any member of the district commission to complete such member's term shall expire when the term of the

~~departed member would otherwise have expired.~~ AFTER THE DATE OF THE VACANCY. IF THE ORIGINAL APPOINTING AUTHORITY FAILS TO MAKE THE APPOINTMENT, OR APPOINTMENTS IF MORE THAN ONE VACANCY, WITHIN FORTY-FIVE DAYS AFTER THE DATE OF THE VACANCY, THE STATE COMMISSION SHALL MAKE THE APPOINTMENT OR APPOINTMENTS. Justices and judges actively performing judicial duties may not be appointed to serve on the district commission. Retired justices and judges are eligible to be appointed as attorney members; except that no retired justice or judge may be assigned or appointed to perform judicial duties while serving on the district commission.

SECTION 5. 13-5.5-105, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

13-5.5-105. Powers and duties of district commissions. (1) In addition to other powers conferred and duties imposed upon a district commission by this article, a district commission has the following powers and duties subject to and in conformity with the rules promulgated by the state commission and the state commission's review of deliberation procedures pursuant to section 13-5.5-103 (1) (1):

(a) To distribute ~~questionnaires~~ SURVEYS, and interview judges, and, TO THE EXTENT DEEMED APPROPRIATE BY THE DISTRICT COMMISSION, INTERVIEW other appropriate persons, ~~under the state commission's direction~~ ACCEPT INFORMATION AND DOCUMENTATION FROM INTERESTED PARTIES, AND, FOLLOWING AT LEAST TEN DAYS' NOTICE, CONDUCT PUBLIC HEARINGS; and

(b) To DRAFT, produce, and distribute to the public a narrative profile on each district and county judge ~~subject to retention election~~ AND MAGISTRATE REQUIRED TO BE EVALUATED UNDER SECTION 13-5.5-106 (2) OR (3).

SECTION 6. 13-5.5-106 (1) (c) and (2) (c), Colorado Revised Statutes, 1987 Repl. Vol., as amended, are amended, and the said 13-5.5-106 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

13-5.5-106. Recommendations on retention of justices and judges. (1) (c) The state commission shall release the narrative profile, the recommendation, and any other relevant information to the public no later than ~~sixty~~ FORTY-FIVE days prior to the retention election. THE STATE COMMISSION SHALL ARRANGE TO HAVE A SUMMARY OF THE NARRATIVE PROFILE AND RECOMMENDATION PRINTED IN THE BALLOT INFORMATION BOOKLET PREPARED PURSUANT TO SECTION 1-40-124.5, C.R.S., AND MAILED TO ELECTORS PURSUANT TO SECTION 1-40-125, C.R.S.

(2) (c) The district commission shall release the narrative profile, the recommendation, and any other relevant information to the public no later than forty-five days prior to the retention election. THE DISTRICT COMMISSION SHALL ARRANGE TO HAVE A SUMMARY OF THE NARRATIVE PROFILE AND RECOMMENDATION PRINTED IN THE BALLOT INFORMATION BOOKLET PREPARED PURSUANT TO SECTION 1-40-124.5, C.R.S., AND MAILED TO ELECTORS WITHIN THE JUDICIAL DISTRICT PURSUANT TO SECTION 1-40-125, C.R.S.

(3) (a) IN ADDITION TO THE EVALUATIONS CONDUCTED PURSUANT TO SUBSECTION (2) OF THIS SECTION:

(I) THE DISTRICT COMMISSION SHALL CONDUCT EVALUATIONS AND PREPARE NARRATIVE PROFILES PURSUANT TO THIS SUBSECTION (3) OF EACH DISTRICT OR COUNTY JUDGE DURING EACH EVEN-NUMBERED YEAR IN WHICH THE JUDGE IS NOT SCHEDULED FOR A RETENTION ELECTION.

(II) THE DISTRICT COMMISSION SHALL CONDUCT EVALUATIONS AND PREPARE NARRATIVE PROFILES PURSUANT TO THIS SUBSECTION (3) OF EACH MAGISTRATE EACH ODD-NUMBERED YEAR.

(b) EVALUATIONS AND THE NARRATIVE PROFILE DEVELOPED UNDER THIS SUBSECTION (3) SHALL BE DELIVERED TO THE JUDGE OR MAGISTRATE ON OR BEFORE JULY 1 OF THE YEAR IN WHICH THE EVALUATION IS PERFORMED. THE JUDGE OR MAGISTRATE SHALL HAVE THE OPPORTUNITY TO MEET WITH THE DISTRICT COMMISSION OR OTHERWISE RESPOND TO THE EVALUATION NO LATER THAN TEN DAYS FOLLOWING RECEIPT OF SUCH EVALUATION. IF SUCH MEETING IS HELD OR RESPONSE IS MADE, THE DISTRICT COMMISSION MAY REVISE ITS EVALUATION.

(c) THE DISTRICT COMMISSION SHALL RELEASE THE NARRATIVE PROFILE AND ANY OTHER RELEVANT INFORMATION DEVELOPED UNDER THIS SUBSECTION (3) TO THE CHIEF JUDGE OF THE COURT AND TO THE JUDGE OR MAGISTRATE NO LATER THAN SEPTEMBER 1 OF THE YEAR IN WHICH THE EVALUATION IS PERFORMED. BY SEPTEMBER 1 OF THE YEAR IN WHICH THE EVALUATION IS PERFORMED, THE NARRATIVE PROFILE AND ANY OTHER RELEVANT INFORMATION DEVELOPED UNDER THIS SUBSECTION (3) SHALL ALSO BE AVAILABLE TO THE PUBLIC; EXCEPT THAT NARRATIVE PROFILES PREPARED PURSUANT TO THIS SUBSECTION (3) SHALL NOT BE MAILED TO REGISTERED VOTERS.

SECTION 7. Transfer of funds - statement of intent. (1) Notwithstanding any provision of section 24-21-104 (3) (b), Colorado Revised Statutes, to the contrary, on July 1, 1997, the state treasurer shall deduct sixteen thousand dollars (\$16,000) from the department of state cash fund and transfer such sum to the ballot information publication and distribution revolving fund created in section 1-40-124.5 (3), Colorado Revised Statutes.

(2) It is the intent of the general assembly that, for the fiscal year beginning July 1, 1998, printing the recommendations in the blue book as required by this act will require an appropriation to the legislative council of fifty-six thousand dollars (\$56,000). Of such amount, forty thousand dollars (\$40,000) shall come from the general fund moneys that would otherwise have been appropriated to the judicial department for the fiscal year beginning July 1, 1998, and sixteen thousand (\$16,000) shall come from moneys transferred to the ballot information publication and distribution revolving fund pursuant to subsection (1) of this section.

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

Approved: June 5, 1997