

CHAPTER 178

GOVERNMENT - STATE

SENATE BILL 07-210

BY SENATOR(S) McElhany and Groff, Fitz-Gerald, May R., Spence, and Tupa;
also REPRESENTATIVE(S) Marshall and May M., and Labuda.

AN ACT

CONCERNING THE ESTABLISHMENT OF THE INDEPENDENT ETHICS COMMISSION AS REQUIRED BY ARTICLE XXIX OF THE STATE CONSTITUTION, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. Title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

**ARTICLE 18.5
Independent Ethics Commission**

24-18.5-101. Independent ethics commission - establishment - membership - subpoena power - definitions. (1) AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ARTICLE XXIX" MEANS ARTICLE XXIX OF THE STATE CONSTITUTION APPROVED BY THE VOTERS AT THE 2006 GENERAL ELECTION.

(b) "COMMISSION" MEANS THE INDEPENDENT ETHICS COMMISSION CREATED IN SECTION 5 (1) OF ARTICLE XXIX.

(2) (a) THE INDEPENDENT ETHICS COMMISSION IS HEREBY ESTABLISHED IN THE OFFICE OF ADMINISTRATIVE COURTS IN THE DEPARTMENT OF PERSONNEL CREATED IN SECTION 24-30-1001. THE COMMISSION SHALL CONSIST OF FIVE MEMBERS. THE APPOINTING AUTHORITIES FOR THE COMMISSION MEMBERS, THE ORDER OF APPOINTMENT OF SUCH MEMBERS, AND OTHER REQUIREMENTS PERTAINING TO COMMISSION MEMBERSHIP SHALL BE AS SPECIFIED IN SECTION 5 (2) (a) OF ARTICLE XXIX. SUBJECT TO THE REQUIREMENTS OF PARAGRAPH (b) OF THIS SUBSECTION (2), THE MEMBER APPOINTED BY THE SENATE PURSUANT TO SECTION 5 (2) (a) (I) OF

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

ARTICLE XXIX SHALL BE APPOINTED BY THE PRESIDENT OF THE SENATE WITH THE APPROVAL OF TWO-THIRDS OF THE MEMBERS ELECTED TO THE SENATE. SUBJECT TO THE REQUIREMENTS OF PARAGRAPH (b) OF THIS SUBSECTION (2), THE MEMBER APPOINTED BY THE HOUSE OF REPRESENTATIVES PURSUANT TO SECTION 5 (2) (a) (II) OF ARTICLE XXIX SHALL BE APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES WITH THE APPROVAL OF TWO-THIRDS OF THE MEMBERS ELECTED TO THE HOUSE OF REPRESENTATIVES. THE MEMBER APPOINTED BY THE HOUSE OF REPRESENTATIVES PURSUANT TO THIS PARAGRAPH (a) SHALL NOT BE AFFILIATED WITH THE SAME POLITICAL PARTY AS THE PERSON APPOINTED BY THE SENATE.

(b) IN CONNECTION WITH THE APPOINTMENT OF COMMISSION MEMBERS, THE MAJOR POLITICAL PARTIES AS DEFINED IN SECTION 1-1-104 (22), C.R.S., SHALL HAVE EQUAL NUMBERS OF MEMBERS APPOINTED TO THE COMMISSION.

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

(3) COMMISSION MEMBERS SHALL 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.

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

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

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

(II) THE COMMISSION SHALL PREPARE A RESPONSE TO A REQUEST FOR AN ADVISORY OPINION FROM A PUBLIC OFFICER, MEMBER OF THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR GOVERNMENT EMPLOYEE AS TO WHETHER PARTICULAR ACTION BY SUCH OFFICER, MEMBER, OFFICIAL, OR EMPLOYEE SATISFIES THE REQUIREMENTS OF ARTICLE XXIX NOT MORE THAN TWENTY BUSINESS DAYS AFTER THE REQUEST IS MADE TO THE COMMISSION.

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

(IV) EACH ADVISORY OPINION OR LETTER RULING, AS APPLICABLE, ISSUED BY THE COMMISSION SHALL BE A PUBLIC DOCUMENT AND SHALL BE PROMPTLY POSTED ON A WEBSITE THAT SHALL BE MAINTAINED BY THE COMMISSION; EXCEPT THAT, IN THE CASE OF A LETTER RULING, THE COMMISSION SHALL REDACT THE NAME OF THE PERSON REQUESTING THE RULING OR OTHER IDENTIFYING INFORMATION BEFORE IT IS POSTED ON THE WEBSITE.

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

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

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

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

(c) THIS SUBSECTION (5) IS REPEALED IF THE COLORADO SUPREME COURT HOLDS, IN RESPONSE TO ONE OR MORE WRITTEN QUESTIONS SUBMITTED BY THE GENERAL ASSEMBLY PURSUANT TO SECTION 3 OF ARTICLE VI OF THE STATE CONSTITUTION, THAT THE STANDARD OF ACCEPTING OR RECEIVING "ANY GIFT OR OTHER THING OF VALUE FOR PRIVATE GAIN OR PERSONAL FINANCIAL GAIN" SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (5) IS UNCONSTITUTIONAL IN APPLYING SECTION 3 (1) OR (2) OF ARTICLE XXIX.

(6) PURSUANT TO THE PROVISIONS OF SECTION 5 (1) OF ARTICLE XXIX, THE COMMISSION SHALL 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. ANY RULES SHALL BE PROMULGATED IN ACCORDANCE WITH THE REQUIREMENTS OF ARTICLE 4 OF THIS TITLE.

(7) SUBJECT TO AVAILABLE APPROPRIATIONS, THE COMMISSION MAY EMPLOY SUCH STAFF AS IT DEEMS NECESSARY TO ENABLE IT TO CARRY OUT ITS FUNCTIONS IN ACCORDANCE WITH THE REQUIREMENTS OF THIS ARTICLE AND ARTICLE XXIX.

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

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

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

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

(3) In addition to any other appropriation, there is hereby appropriated, to the department of law, for the fiscal year beginning July 1, 2007, the sum of one hundred twenty-one thousand nine hundred eighty-six dollars (\$121,986) and 0.9 FTE, or so much thereof as may be necessary, for the provision of legal services to the department of personnel and administration, division of administrative courts, related to the implementation of this act. Said sum shall be from cash funds exempt received from the department of personnel and administration, executive office, out of the appropriation made in subsection (1) of this section.

(4) For implementation of this act, the appropriation made in section 21 of the annual general appropriation act for the fiscal year beginning July 1, 2007, shall be adjusted as follows: The general fund appropriation to the controlled maintenance trust fund is decreased by two hundred nineteen thousand nine hundred ninety-six dollars (\$219,996).

SECTION 3. 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: April 26, 2007