

Second Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0069.01 Chuck Brackney x2295

HOUSE BILL 12-1016

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HOUSE SPONSORSHIP

Balmer,

SENATE SPONSORSHIP

(None),

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House Committees  
Transportation

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING LIMITING EX PARTE COMMUNICATIONS BY  
102 COMMISSIONERS OF THE PUBLIC UTILITIES COMMISSION.

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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 allows a party to a proceeding before the public utilities commission (PUC) to file a motion seeking the disqualification of a public utilities commissioner or an administrative law judge for failure to be impartial. A district court may stay or suspend the proceedings of the PUC if the PUC fails to disqualify a commissioner from the proceedings.

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.*

If the disqualification of a commissioner results in the loss of a quorum, the decision rendered by a commissioner designated as a hearing officer or by an administrative law judge is the final decision of the PUC. The rule of necessity, which states that under some circumstances an adjudicator must hear a case even if the adjudicator has an interest in the case, does not apply.

The bill specifies that the standards contained in the Colorado code of judicial conduct apply to commissioners and PUC administrative law judges.

The bill requires the director to post memoranda regarding ex parte communications by commissioners and administrative law judges on the PUC's web site within 5 business days. Discussions by commissioners or administrative law judges on pending legislative proposals will no longer be exempted from disclosure as an "adjudicatory proceeding".

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

2 **SECTION 1.** In Colorado Revised Statutes, 40-6-123, **add** (5.5)

3 as follows:

4 **40-6-123. Standards of conduct.** (5.5) THE STANDARDS  
5 CONTAINED IN THE COLORADO CODE OF JUDICIAL CONDUCT APPLY TO  
6 COMMISSIONERS OF THE PUBLIC UTILITIES COMMISSION AND PUBLIC  
7 UTILITIES COMMISSION ADMINISTRATIVE LAW JUDGES ACTING IN THEIR  
8 QUASI-JUDICIAL CAPACITY.

9 **SECTION 2.** In Colorado Revised Statutes, 40-6-116, **add** (2.5)

10 as follows:

11 **40-6-116. Suspension of decision - notice - bond - accounting**  
12 **pending review.** (2.5) A DISTRICT COURT MAY STAY OR SUSPEND A  
13 COMMISSION PROCEEDING IF THE COMMISSION DECLINES TO DISQUALIFY  
14 ONE OR MORE COMMISSIONERS PURSUANT TO SECTION 40-6-122. THE  
15 COURT MAY STAY OR SUSPEND A PROCEEDING EVEN IF THE COMMISSION  
16 HAD NOT BEEN PREVIOUSLY REQUESTED TO STAY OR SUSPEND THE  
17 PROCEEDING. THE COURT MUST HEAR THE APPLICATION AT THE EARLIEST

1 PRACTICAL TIME. A PARTY MAKING A REQUEST TO STAY OR SUSPEND A  
2 COMMISSION PROCEEDING IS NOT REQUIRED TO MAKE AN APPLICATION FOR  
3 RECONSIDERATION, REARGUMENT, OR REHEARING OF A COMMISSION  
4 DECISION PURSUANT TO SECTION 40-6-114 REGARDING THE  
5 DISQUALIFICATION OF ONE OR MORE COMMISSIONERS.

6 **SECTION 3.** In Colorado Revised Statutes, 40-6-122, **amend** (3)  
7 and (5); and **add** (6), (7), and (8) as follows:

8 **40-6-122. Ex parte communications - disclosure -**  
9 **disqualification.** (3) Each memorandum filed pursuant to subsection (1)  
10 of this section shall set forth the time and place at which the  
11 communication was made, the persons who were present at that time and  
12 place, a statement of the subject matter of the communication, other than  
13 proprietary information, and a statement that the subject matter of the  
14 communication did not relate to any pending adjudicatory proceeding  
15 before the commission. It shall not be necessary for the memorandum to  
16 be prepared by the commissioner or judge, but it shall be signed or  
17 otherwise authenticated by the commissioner or judge, whose signature  
18 or authentication shall constitute a certificate by such commissioner or  
19 judge that the memorandum is complete and accurate. All such  
20 memoranda shall be filed with the director of the commission, who shall  
21 keep them on file and available for public inspection for a minimum of  
22 three years after their submission. THE DIRECTOR SHALL POST EACH  
23 MEMORANDUM ON THE COMMISSION'S WEB SITE WITHIN FIVE BUSINESS  
24 DAYS AFTER IT IS FILED.

25 (5) As used in this section, an "adjudicatory proceeding" does not  
26 include a rule-making proceeding. ~~or discussions on pending legislative~~  
27 ~~proposals.~~

1           (6) THE COMMON-LAW GOVERNMENTAL PRIVILEGE, OR THE  
2 DELIBERATIVE PROCESS PRIVILEGE, DOES NOT PROTECT THE RECORDS OF  
3 COMMUNICATIONS AMONG TWO OR MORE COMMISSIONERS CONCERNING  
4 PENDING LEGISLATIVE PROPOSALS. SUCH COMMUNICATIONS ARE SUBJECT  
5 TO DISCLOSURE IN ACCORDANCE WITH THE "COLORADO OPEN RECORDS  
6 ACT", PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S.

7           (7) WHEN A PARTY HAS A GOOD-FAITH BELIEF THAT A  
8 COMMISSIONER OR ADMINISTRATIVE LAW JUDGE MAY NOT BE IMPARTIAL  
9 OR HAS ENGAGED IN A PROHIBITED COMMUNICATION, THE PARTY MAY FILE  
10 A MOTION TO DISQUALIFY THE COMMISSIONER OR ADMINISTRATIVE LAW  
11 JUDGE FROM THE PROCEEDING. THE COMMISSION SHALL SUSPEND THE  
12 PROCEEDING UNTIL IT RULES ON THE MOTION. THE COMMISSION SHALL  
13 RULE UPON THE MOTION WITHIN TEN BUSINESS DAYS.

14           (8) IF THE DISQUALIFICATION OF A COMMISSIONER PURSUANT TO  
15 SUBSECTION (7) OF THIS SECTION RESULTS IN THE LOSS OF A QUORUM, THE  
16 DECISION RENDERED BY A COMMISSIONER DESIGNATED AS A HEARING  
17 OFFICER OR BY AN ADMINISTRATIVE LAW JUDGE IS THE FINAL DECISION OF  
18 THE COMMISSION. IN THIS SITUATION, A SUIT TO ENFORCE, ENJOIN,  
19 SUSPEND, MODIFY, OR SET ASIDE ANY FINAL DECISION OF THE HEARING  
20 OFFICER OR ADMINISTRATIVE LAW JUDGE MAY BE BROUGHT IN DISTRICT  
21 COURT WITHOUT AN APPLICATION FOR RECONSIDERATION, REARGUMENT,  
22 OR REHEARING PURSUANT TO SECTION 40-6-114. THE RULE OF NECESSITY  
23 DOES NOT APPLY IN SITUATIONS WHERE A QUORUM IS LOST DUE TO THE  
24 DISQUALIFICATION OF A COMMISSIONER OR ADMINISTRATIVE LAW JUDGE.

25           **SECTION 4.** In Colorado Revised Statutes, 24-72-202, **amend**  
26 (6) (a) (II) introductory portion as follows:

27           **24-72-202. Definitions.** As used in this part 2, unless the context

1 otherwise requires:

2 (6) (a) (II) "Public records" includes the correspondence of elected  
3 officials, INCLUDING ANY COMMUNICATION BETWEEN TWO OR MORE  
4 MEMBERS OF THE PUBLIC UTILITIES COMMISSION CONCERNING PENDING  
5 LEGISLATIVE PROPOSALS, except to the extent that such correspondence  
6 OR COMMUNICATION is:

7 **SECTION 5. Act subject to petition - effective date.** This act  
8 takes effect September 1, 2012; except that, if a referendum petition is  
9 filed pursuant to section 1 (3) of article V of the state constitution against  
10 this act or an item, section, or part of this act within the ninety-day period  
11 after final adjournment of the general assembly, then the act, item,  
12 section, or part will not take effect unless approved by the people at the  
13 general election to be held in November 2012 and, in such case, will take  
14 effect on the date of the official declaration of the vote thereon by the  
15 governor.