

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 17-0953.02 Duane Gall x4335

HOUSE BILL 17-1323

HOUSE SPONSORSHIP

Esgar,

SENATE SPONSORSHIP

Cooke and Garcia,

House Committees

Transportation & Energy
Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES TO ENHANCE THE CONSUMER PROTECTION**
102 **MISSION OF THE COLORADO PUBLIC UTILITIES COMMISSION,**
103 **AND, IN CONNECTION THEREWITH, PROHIBITING A PERSON WITH**
104 **RECENT CONNECTIONS TO A REGULATED UTILITY FROM SERVING**
105 **ON THE COMMISSION, REQUIRING THE APPOINTMENT OF AN**
106 **ETHICS OMBUDSMAN, AND PROVIDING FOR PERIODIC**
107 **PERFORMANCE AUDITS.**

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://leg.colorado.gov>.)

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.

Section 2 of the bill prohibits a person from serving on the public utilities commission if he or she:

- ! Has, within the immediately preceding 4 years, served as an officer or director of a regulated utility; or
- ! Has or acquires any official relation to, or financial interest in, a regulated utility.

Section 3 encourages the director of the commission to assign employees to temporary training and development sessions with other state agencies, particularly those with which the commission has frequent interaction, to improve the employees' substantive expertise and familiarity with the operations of those agencies. Section 3 also requires the director to keep written and audio records of the commission's proceedings and make them publicly available online.

In addition, section 3 expressly authorizes the executive director of the department of regulatory agencies (of which the commission is a part) to request that the state auditor conduct performance audits of the commission and its staff and operations.

Section 4 creates the position of independent ombudsman for ethics to:

- ! Receive complaints and comments about the commission's performance of its duties;
- ! Create, maintain, and administer a continuing program of ethics training for commissioners and staff; and
- ! Annually report to the executive director and the general assembly concerning the number, character, and disposition of complaints the ombudsman received during the preceding year.

Section 6 funds the office of the ombudsman using an existing cash fund, the fixed utility fund. **Section 7** directs the commission to adopt rules concerning conflicts of interest, incompatible activities, and ex parte communications, which rules form the basis of the ombudsman's ethics training curriculum.

Sections 1 and 5 make conforming amendments.

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

2 **SECTION 1.** In Colorado Revised Statutes, 40-1-102, **amend** the
3 introductory portion; and **add** (6.5) as follows:

4 **40-1-102. Definitions.** As used in articles 1 to 7 of this ~~title~~ TITLE
5 40, unless the context otherwise requires:

1 (6.5) "DIRECTOR" MEANS THE DIRECTOR OF THE COMMISSION.

2 **SECTION 2.** In Colorado Revised Statutes, 40-2-101, **amend** (2)
3 as follows:

4 **40-2-101. Creation - appointment - term - subject to**
5 **termination - repeal of article.** (2) (a) No more than two members of
6 the public utilities commission shall be affiliated with the same political
7 party, and any appointment to fill a vacancy shall be for the unexpired
8 term. Each commissioner shall be a qualified elector of this state. The
9 governor shall designate one member of the commission as chair of the
10 commission. The commissioners shall devote their entire time to the
11 duties of their office to the exclusion of any other employment and shall
12 receive such compensation as is designated by law. A majority of the
13 commission shall constitute a quorum for the transaction of its business.

14 (b) EFFECTIVE JULY 1, 2017:

15 (I) TO BE ELIGIBLE FOR APPOINTMENT AS A COMMISSIONER, A
16 PERSON MUST NOT HAVE SERVED, WITHIN THE IMMEDIATELY PRECEDING
17 FOUR YEARS, AS AN OFFICER OR DIRECTOR OF A PERSON SUBJECT TO
18 REGULATION BY THE COMMISSION; AND

19 (II) (A) A MEMBER OF THE COMMISSION SHALL NOT HOLD ANY
20 OFFICIAL RELATION TO, NOR HAVE A FINANCIAL INTEREST IN, A PERSON
21 SUBJECT TO REGULATION BY THE COMMISSION. IF A COMMISSIONER
22 ACQUIRES A FINANCIAL INTEREST IN A PERSON SUBJECT TO REGULATION BY
23 THE COMMISSION OTHER THAN VOLUNTARILY, HIS OR HER OFFICE BECOMES
24 VACANT UNLESS WITHIN A REASONABLE TIME HE OR SHE DIVESTS HIMSELF
25 OR HERSELF OF THE INTEREST.

26 (B) AS USED IN THIS SECTION, "FINANCIAL INTEREST" DOES NOT
27 INCLUDE PASSIVE OWNERSHIP OF STOCKS, BONDS, OR OTHER INTERESTS AS

1 PART OF A MUTUAL FUND OR SIMILAR INVESTMENT VEHICLE.

2 SECTION 3. In Colorado Revised Statutes, 40-2-104, **amend** (1)
3 and (3) as follows:

4 **40-2-104. Assistants and employees.** (1) (a) The director ~~of the~~
5 ~~commission~~ may appoint such experts, engineers, statisticians,
6 accountants, investigative personnel, clerks, and other employees as are
7 necessary to carry out ~~the provisions of this title~~ TITLE 40 or to perform
8 the duties and exercise the powers conferred by law upon the
9 commission.

10 (b) THE DIRECTOR MAY AUTHORIZE COMMISSION EMPLOYEES TO
11 UNDERTAKE TEMPORARY TRAINING AND DEVELOPMENT ASSIGNMENTS
12 WITH OTHER AGENCIES, DEPARTMENTS, AND COMMISSIONS. THESE
13 ASSIGNMENTS SHOULD BE SELECTED TO ENHANCE THE EMPLOYEES'
14 SUBSTANTIVE EXPERTISE RELATED TO, AND FAMILIARITY WITH THE
15 OPERATIONS OF, AGENCIES THAT UNDERTAKE COORDINATED ACTIVITIES
16 WITH THE COMMISSION, SUCH AS THE COLORADO ENERGY OFFICE, THE AIR
17 QUALITY CONTROL COMMISSION, THE DEPARTMENT OF PUBLIC HEALTH
18 AND ENVIRONMENT, AND THE COLORADO WATER CONSERVATION BOARD.
19 IN ADDITION, THE DIRECTOR MAY COLLABORATE WITH COLORADO
20 INSTITUTIONS OF HIGHER EDUCATION TO DEVELOP CURRICULUM AND
21 TRAINING NECESSARY OR USEFUL TO CANDIDATES FOR EMPLOYMENT WITH
22 THE COMMISSION.

23 (3) (a) The director ~~of the commission~~ shall hire and designate
24 employees of the commission as administrative law judges who shall have
25 the power to administer oaths, examine witnesses, receive evidence, and
26 conduct hearings, investigations, and other proceedings on behalf of the
27 commission.

1 (b) THE DIRECTOR SHALL MAKE AND MAINTAIN AUDIO
2 RECORDINGS OF ALL PROCEEDINGS OF THE COMMISSION, INCLUDING THOSE
3 REQUIRED BY SECTION 40-2-106, AND SHALL POST AUDIO RECORDINGS
4 AND ANY OTHER OFFICIAL RECORDS OF THOSE PROCEEDINGS ONLINE FOR
5 ACCESS BY THE PUBLIC.

6 (c) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
7 REGULATORY AGENCIES MAY PERIODICALLY REQUEST THAT THE STATE
8 AUDITOR CONDUCT A PERFORMANCE AUDIT OF THE COMMISSION AND ITS
9 STAFF AND OPERATIONS.

10 **SECTION 4.** In Colorado Revised Statutes, **add** 40-2-104.5 as
11 follows:

12 **40-2-104.5. Ombudsman - duties.** (1) THE EXECUTIVE DIRECTOR
13 OF THE DEPARTMENT OF REGULATORY AGENCIES SHALL COORDINATE WITH
14 THE OFFICE OF THE ATTORNEY GENERAL TO APPOINT AN INDEPENDENT
15 OMBUDSMAN FOR ETHICS, WHOSE DUTIES INCLUDE:

16 (a) RECEIVING COMPLAINTS AND COMMENTS FROM EMPLOYEES OF
17 THE COMMISSION AND MEMBERS OF THE PUBLIC CONCERNING HOW THE
18 COMMISSION IS CARRYING OUT ITS FUNCTIONS;

19 (b) CREATING, MAINTAINING, AND ADMINISTERING A PROGRAM OF
20 ENHANCED ETHICS TRAINING FOR ALL COMMISSIONERS AND EMPLOYEES
21 OF THE COMMISSION, INCLUDING APPLICATION OF THE COMMISSION'S
22 RULES AND POLICIES CONCERNING CONFLICTS OF INTEREST, INCOMPATIBLE
23 ACTIVITIES, AND EX PARTE COMMUNICATIONS ADOPTED UNDER SECTION
24 40-6-123 (1)(b); AND

25 (c) REPORTING ANNUALLY, ON OR BEFORE JANUARY 31 OF EACH
26 YEAR, TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY
27 AGENCIES AND TO THE TRANSPORTATION AND ENERGY COMMITTEE OF THE

1 HOUSE OF REPRESENTATIVES AND THE AGRICULTURE, NATURAL
2 RESOURCES, AND ENERGY COMMITTEE OF THE SENATE, OR THEIR
3 SUCCESSOR COMMITTEES, CONCERNING THE NUMBER OF COMPLAINTS
4 RECEIVED BY THE OMBUDSMAN, THE PERSON OR EVENT THAT PROMPTED
5 EACH COMPLAINT, THE ISSUES RAISED BY THE COMPLAINTS RECEIVED, AND
6 THE DISPOSITION OF THE COMPLAINTS. NOTWITHSTANDING SECTION
7 24-1-136 (11)(a)(I), THE DUTY OF THE OMBUDSMAN TO MAKE ANNUAL
8 REPORTS UNDER THIS SUBSECTION (1)(c) CONTINUES INDEFINITELY.

9 **SECTION 5.** In Colorado Revised Statutes, **amend** 40-2-106 as
10 follows:

11 **40-2-106. Reports and decisions of the commission.** Whenever
12 an investigation is made, a hearing is held, or a decision is entered by the
13 commission, ~~it is the duty of the commission to~~ SHALL make a report or
14 decision in writing ~~in respect thereto~~ WITH REGARD TO THE
15 INVESTIGATION, HEARING, OR DECISION, which ~~shall~~ MUST state its
16 findings of fact and conclusions thereon, together with its decision or
17 requirement in the premises. All such reports and decisions shall be
18 entered of record, and ~~a copy thereof~~ COPIES shall be furnished to all
19 parties to the proceedings and to such other persons as the commission
20 may deem advisable.

21 **SECTION 6.** In Colorado Revised Statutes, 40-2-110, **amend**
22 (2)(a)(I) as follows:

23 **40-2-110. Appropriation and fees.** (2) (a) (I) At each regular
24 session, the general assembly shall determine the amounts to be expended
25 by the public utilities commission for its administrative expenses in the
26 supervision and regulation of motor carriers as provided by law,
27 INCLUDING THE ACTIVITIES OF THE INDEPENDENT OMBUDSMAN FOR ETHICS

1 PURSUANT TO SECTION 40-2-104.5, and shall appropriate such amounts
2 from the public utilities commission motor carrier fund established in
3 section 40-2-110.5 as are necessary to be expended by the commission to
4 accomplish said purposes.

5 SECTION 7. In Colorado Revised Statutes, 40-2-114, **amend** (2)
6 as follows:

7 **40-2-114. Disposition of fees collected - telecommunications**
8 **utility fund - fixed utility fund.** (2) (a) Moneys in the funds created in
9 subsection (1) of this section shall be expended only to defray the full
10 amount determined by the general assembly for:

11 (I) The administrative expenses of the commission for the
12 supervision and regulation of the public utilities paying the fees; ~~and for~~

13 (II) The financing of the office of consumer counsel created in
14 article 6.5 of this ~~title~~ TITLE 40; AND

15 (III) THE FINANCING OF THE ACTIVITIES OF THE INDEPENDENT
16 OMBUDSMAN FOR ETHICS PURSUANT TO SECTION 40-2-104.5.

17 (b) The state treasurer shall retain any unexpended balance
18 remaining in either fund at the end of any fiscal year to defray the
19 administrative expenses of the commission during subsequent fiscal
20 years, and the executive director of the department of revenue shall take
21 any such unexpended balance into account when computing the
22 percentage upon which fees for the ensuing fiscal year will be based.

23 SECTION 8. In Colorado Revised Statutes, 40-6-123, **amend** (1)
24 and (3) as follows:

25 **40-6-123. Standards of conduct.** (1) (a) Members and staff of
26 the commission shall conduct themselves in such a manner as to ensure
27 fairness in the discharge of the duties of the commission, to provide

1 equitable treatment of the public, utilities, and other parties, to maintain
2 public confidence in the integrity of the commission's actions, and to
3 prevent the appearance of impropriety or of conflict of interest. The
4 standards set forth in this section AND IN RULES ADOPTED BY THE
5 COMMISSION UNDER SUBSECTION (1)(b) OF THIS SECTION apply at all times
6 to the commissioners, to their staff, including administrative law judges,
7 and to parties under contract with the commission for state business.

8 (b) THE COMMISSION SHALL ADOPT RULES SETTING FORTH:

9 (I) THE COMMISSION'S POLICIES CONCERNING CONFLICTS OF
10 INTEREST;

11 (II) A STATEMENT OF INCOMPATIBLE ACTIVITIES; AND

12 (III) LIMITATIONS ON EX PARTE COMMUNICATIONS.

13 (3) Neither commissioners, staff members, parties under contract
14 for state work, or members of the immediate families of such persons
15 shall request or accept any gift, bequest, or loan from persons who appear
16 before the commission; except that commissioners and staff members
17 may participate in meetings, conferences, or educational programs ~~which~~
18 THAT are open to other persons SO LONG AS ALL SUCH MEETINGS,
19 CONFERENCES, OR PROGRAMS ARE CONSISTENT WITH THE COMMISSION'S
20 CURRENT RULES AND POLICIES ADOPTED IN ACCORDANCE WITH
21 SUBSECTION (1)(b) OF THIS SECTION.

22 **SECTION 9. Effective date.** This act takes effect July 1, 2017.

23 **SECTION 10. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, and safety.