

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0365.01 Jennifer Berman x3286

SENATE BILL 21-103

SENATE SPONSORSHIP

Fenberg and Winter,

HOUSE SPONSORSHIP

(None),

Senate Committees
Transportation & Energy

House Committees

A BILL FOR AN ACT

101 CONCERNING THE CONTINUATION OF THE OFFICE OF CONSUMER
102 COUNSEL, AND, IN CONNECTION THEREWITH, IMPLEMENTING
103 THE RECOMMENDATIONS CONTAINED IN THE 2020 SUNSET
104 REPORT BY THE DEPARTMENT OF REGULATORY AGENCIES
105 REGARDING THE OFFICE OF CONSUMER COUNSEL AND THE
106 UTILITY CONSUMERS' BOARD.

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/>.)

Sunset Process - Senate Transportation and Energy

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Committee. The bill implements the recommendations of the department of regulatory agencies' (department) sunset review and report regarding the office of consumer counsel (office) and the utility consumers' board (board) by:

- Continuing the office and the board for 7 years, to 2028 (**sections 1 and 2** of the bill);
- Clarifying that, in addition to being authorized to appear before and participate in the public utilities commission's proceedings, the office is authorized to appear before and participate in other agencies' proceedings (**sections 6 and 8**);
- Changing the name of the office to the office of the utility consumer advocate and the name of the head of the office from the consumer counsel to the director (**sections 1 and 4 to 10**);
- Changing the board from a **type 1** transfer to a **type 2** transfer (**sections 4 and 10**);
- Repealing requirements that the board annually review the office's performance and confer with the executive director of the department regarding hiring and performance evaluation matters (**section 4**); and
- Repealing the requirement that members of the board represent all 7 of the state's congressional districts and instead requiring that appointing authorities ensure that the board's membership reflect the greatest degree of diversity possible (**section 4**).

Sections 3 and 11 to 13 make conforming amendments.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-34-104, **repeal**
3 (21)(a)(V); and **add** (29)(a)(XIII) as follows:

4 **24-34-104. General assembly review of regulatory agencies**
5 **and functions for repeal, continuation, or reestablishment - legislative**
6 **declaration - repeal.** (21) (a) The following agencies, functions, or both,
7 will repeal on September 1, 2021:

8 (V) ~~The office of consumer counsel created in article 6.5 of title~~
9 ~~40, C.R.S.;~~

10 (29) (a) The following agencies, functions, or both, are scheduled

1 for repeal on September 1, 2028:

2 (XIII) NOTWITHSTANDING SUBSECTION (7)(a) OF THIS SECTION,
3 THE OFFICE OF THE UTILITY CONSUMER ADVOCATE AND THE UTILITY
4 CONSUMERS' BOARD CREATED IN ARTICLE 6.5 OF TITLE 40.

5 **SECTION 2.** In Colorado Revised Statutes, **repeal and reenact,**
6 **with amendments,** 40-6.5-108 as follows:

7 **40-6.5-108. Repeal of article - office of the utility consumer**
8 **advocate subject to termination.** THIS ARTICLE 6.5 IS REPEALED,
9 EFFECTIVE SEPTEMBER 1, 2028. BEFORE THE REPEAL, THIS ARTICLE 6.5 IS
10 SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION 24-34-104.

11 **SECTION 3.** In Colorado Revised Statutes, 40-6.5-101, **amend**
12 the introductory portion; and **add** (1.3), (2.2), (2.4), and (2.8) as follows:

13 **40-6.5-101. Definitions.** As used in this ~~article~~ ARTICLE 6.5,
14 unless the context otherwise requires:

15 (1.3) "BOARD" MEANS THE UTILITY CONSUMERS' BOARD CREATED
16 IN SECTION 40-6.5-102 (3)(a).

17 (2.2) "DIRECTOR" MEANS THE DIRECTOR OF THE OFFICE,
18 APPOINTED PURSUANT TO SECTION 40-6.5-102 (1).

19 (2.4) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF
20 THE DEPARTMENT OF REGULATORY AGENCIES, APPOINTED PURSUANT TO
21 SECTION 24-34-101 (1)(a).

22 (2.8) "OFFICE" MEANS THE OFFICE OF THE UTILITY CONSUMER
23 ADVOCATE CREATED IN SECTION 40-6.5-102 (1).

24 **SECTION 4.** In Colorado Revised Statutes, **amend** 40-6.5-102
25 as follows:

26 **40-6.5-102. Office of the utility consumer advocate and utility**
27 **consumers' board - creation - appointment - attorney general to**

1 **represent.** (1) There is hereby created, as a division within the
2 department of regulatory agencies, the office of ~~consumer counsel~~ THE
3 UTILITY CONSUMER ADVOCATE, the head of which ~~shall be the consumer~~
4 ~~counsel~~ IS THE DIRECTOR, who shall be appointed by the executive
5 director of the ~~department of regulatory agencies~~ pursuant to section 13
6 of article XII of the state constitution.

7 (2) (a) The office of ~~consumer counsel~~ shall exercise its powers
8 and perform its duties and functions specified in this ~~article~~ ARTICLE 6.5
9 under the department of regulatory agencies as if the same were
10 transferred to the department by a **type 1** transfer, as such transfer is
11 defined in the "Administrative Organization Act of 1968", article 1 of title
12 24. ~~C.R.S.~~

13 (b) ~~Repealed.~~

14 (3) (a) The utility consumers' board, which is hereby created, shall
15 guide the policy of the office. ~~of consumer counsel.~~ The board shall
16 exercise its powers and perform its duties and functions specified in this
17 ~~article~~ ARTICLE 6.5 under the department of regulatory agencies and the
18 executive director of the ~~department of regulatory agencies~~ as if the same
19 were transferred to the department by a ~~type 1~~ **TYPE 2** transfer, as such
20 transfer is defined in the "Administrative Organization Act of 1968",
21 article 1 of title 24. ~~C.R.S.~~

22 (b) (I) The board consists of eleven members, seven of whom the
23 governor ~~shall appoint~~ APPOINTS. The governor shall appoint at least one
24 member who is actively engaged in agriculture as a business and at least
25 two members who are owners of small businesses with one hundred or
26 fewer employees. In making appointments to the board, the governor
27 shall ensure that ~~the membership of the board represents each of the seven~~

1 ~~congressional districts of the state and that~~ no more than four of the
2 governor's appointments are affiliated with the same political party. The
3 president of the senate, the speaker of the house of representatives, the
4 minority leader of the senate, and the minority leader of the house of
5 representatives shall each appoint one member of the board. IN MAKING
6 THEIR APPOINTMENTS, THE APPOINTING AUTHORITIES SHALL SEEK TO
7 ENSURE THAT MEMBERSHIP OF THE BOARD REFLECTS THE GREATEST
8 DEGREE OF DIVERSITY POSSIBLE.

9 (II) Members of the board ~~shall be appointed for~~ SERVE terms of
10 four years. If a person has any conflict of interest with the duties required
11 of a member of the board, the ~~person~~ APPOINTING AUTHORITY shall not ~~be~~
12 ~~appointed~~ APPOINT THE PERSON as a member of the board. The official
13 who appointed a board member may remove that board member for
14 misconduct, incompetence, or neglect of duty. Board members serve
15 without compensation, but members who reside outside the counties of
16 Denver, Jefferson, Adams, Arapahoe, Boulder, Broomfield, and Douglas
17 are entitled to reimbursement for reasonable AND actual expenses to
18 attend board meetings in Denver. The board shall meet at least six times
19 per year.

20 (c) It is the duty of the board to represent the public interest of
21 Colorado utility users, and, specifically, the interests of residential,
22 agricultural, and small business users, by providing general policy
23 guidance and oversight for the office ~~of consumer counsel~~ and the
24 ~~consumer counsel~~ DIRECTOR in the performance of their statutory duties
25 and responsibilities as specified in this ~~article~~ ARTICLE 6.5. The powers
26 and duties of the board shall include ~~but not be limited to~~, the following:

27 (I) Providing general policy guidance to the office ~~of consumer~~

1 counsel regarding rule-making matters, legislative projects, general
2 activities, and priorities of the office; AND

3 (II) Gathering data and information and formulating policy
4 positions to advise the office of consumer counsel in preparing analysis
5 and testimony in legislative hearings on proposed legislation affecting the
6 interests of residential, small business, and agricultural utility users.

7 ~~(III) Reviewing the performance of the office of consumer
8 counsel annually;~~

9 ~~(IV) Conferring with the executive director of the department of
10 regulatory agencies on the hiring of the consumer counsel and consulting
11 with such executive director on the annual performance evaluation of the
12 office of consumer counsel and the consumer counsel.~~

13 (4) It is the duty of the attorney general to advise the office of
14 consumer counsel and the board in all legal matters and to provide
15 representation in proceedings in which the office of consumer counsel
16 participates.

17 **SECTION 5.** In Colorado Revised Statutes, **amend** 40-6.5-103
18 as follows:

19 **40-6.5-103. Qualifications of the director - conflict of interest.**

20 The ~~consumer counsel shall~~ DIRECTOR MUST have at least five years of
21 experience in consumer-related utility issues or in the operation,
22 management, or regulation of utilities as either an attorney, an engineer,
23 an economist, an accountant, a financial analyst, or an administrator or
24 any combination thereof. ~~No~~ OF THOSE ROLES. THE EXECUTIVE DIRECTOR
25 SHALL NOT APPOINT AS DIRECTOR A person ~~owning~~ WHO OWNS stocks or
26 bonds in a corporation subject in whole or in part to regulation by the
27 commission or who has any pecuniary interest in such corporation. ~~shall~~

1 ~~be appointed as consumer counsel.~~

2 **SECTION 6.** In Colorado Revised Statutes, **amend** 40-6.5-104
3 as follows:

4 **40-6.5-104. Representation by director.** (1) The ~~consumer~~
5 ~~counsel~~ DIRECTOR shall represent the public interest and, to the extent
6 consistent therewith, the specific interests of residential consumers,
7 agricultural consumers, and small business consumers by appearing in
8 proceedings, INCLUDING RULE-MAKING PROCEEDINGS, before the
9 commission OR ANY OTHER AGENCY and appeals ~~therefrom~~ FROM
10 ACTIONS OF THE COMMISSION OR ANY OTHER AGENCY in matters ~~which~~
11 THAT involve proposed changes ~~in~~ TO OR THAT WOULD AFFECT:

12 (a) A public utility's rates and charges; ~~in matters involving~~
13 ~~rule-making which have an impact on the charges,~~

14 (b) The provision of services; or ~~the rates to consumers, and in~~
15 ~~matters which involve~~

16 (c) Certificates of public convenience and necessity for facilities
17 employed in the provision of utility service, the construction of which
18 would have a material effect on the utility's rates and charges.

19 (2) In ~~exercising his discretion~~ DETERMINING whether ~~or not~~ to
20 appear in a proceeding OF THE COMMISSION OR ANOTHER AGENCY, the
21 ~~consumer counsel~~ DIRECTOR shall consider the importance and the extent
22 of the public interest involved. In evaluating the public interest, the
23 ~~consumer counsel~~ DIRECTOR shall give due consideration to the short- and
24 long-term ~~impact~~ EFFECT of the proceedings upon various classes of
25 consumers, so as not to jeopardize the interest of one class in an action by
26 another. If the ~~consumer counsel~~ DIRECTOR determines that there may be
27 inconsistent interests among the various classes of the consumers ~~he~~ THAT

1 THE DIRECTOR represents in a particular matter, ~~he~~ THE DIRECTOR may
2 choose to represent one of the interests or to represent no interest.
3 Nothing in this section ~~shall be construed to limit~~ LIMITS the right of any
4 person ~~firm, or corporation~~ to petition or make complaint to the
5 commission OR ANY OTHER AGENCY or otherwise intervene in
6 proceedings or other matters before the commission OR ANOTHER
7 AGENCY.

8 (3) The ~~consumer counsel~~ DIRECTOR shall be served with notices
9 of all proposed gas and electric tariffs, and ~~he or she~~ THE DIRECTOR shall
10 be served with copies of all orders of the commission OR OF ANOTHER
11 AGENCY affecting the charges of agricultural consumers, residential
12 consumers, and small business consumers.

13 **SECTION 7.** In Colorado Revised Statutes, 40-6.5-105, **amend**
14 (1) introductory portion and (1)(a) as follows:

15 **40-6.5-105. Intervenor other than the office of the utility**
16 **consumer advocate.** (1) If the office of ~~consumer counsel~~ intervenes and
17 there are other intervenors in proceedings before the commission, the
18 determination of said commission with regard to the payment of expenses
19 of intervenors, other than the office, ~~of consumer counsel~~, and the
20 amounts thereof shall be based on the following considerations:

21 (a) Any reimbursements may be awarded only for expenses
22 related to issues not substantially addressed by the office; ~~of consumer~~
23 ~~counsel~~;

24 **SECTION 8.** In Colorado Revised Statutes, 40-6.5-106, **amend**
25 (1) introductory portion, (1)(c), (2), (2.5), and (3)(a) as follows:

26 **40-6.5-106. Powers of the director.** (1) The ~~consumer counsel~~
27 DIRECTOR:

1 (c) May contract for the services of technically qualified persons
2 to perform research and to appear as expert witnesses before the
3 commission ~~such persons to be paid~~ OR ANY OTHER AGENCY. THE
4 DIRECTOR SHALL PAY ANY PERSON CONTRACTED WITH PURSUANT TO THIS
5 SUBSECTION (1)(c) from funds appropriated for the DIRECTOR'S use. ~~of the~~
6 ~~consumer counsel~~;

7 (2) The ~~consumer counsel~~ DIRECTOR may petition for, request,
8 initiate, and appear and intervene as a party in any COMMISSION OR OTHER
9 AGENCY proceeding, ~~before the commission concerning~~ INCLUDING A
10 RULE-MAKING PROCEEDING, THAT CONCERNS OR AFFECTS UTILITY rate
11 changes, ~~rule-making~~, charges, tariffs, modifications of service, and
12 matters involving certificates of public convenience and necessity.
13 Notwithstanding any provision of this ~~article~~ ARTICLE 6.5 to the contrary,
14 the ~~consumer counsel~~ DIRECTOR shall not be a party to any individual
15 complaint between a utility and an individual.

16 (2.5) The ~~consumer counsel~~ DIRECTOR may petition for, request,
17 initiate, or seek to intervene in any proceeding before a federal agency
18 ~~which~~ THAT regulates utility rates or service or BEFORE A federal court
19 when the matter before ~~such~~ THE agency or court will affect a rate,
20 charge, tariff, or term of service for a utility product or service for a
21 residential, small business, or agricultural utility consumer in the state of
22 Colorado. The phrase "federal agency ~~which~~ THAT regulates utility rates
23 or service" does not include any federal lending agency.

24 (3) (a) The ~~consumer counsel~~ DIRECTOR and any member of his
25 ~~or her~~ THE DIRECTOR'S staff directly involved in a specific adjudicatory
26 proceeding before the commission shall refrain from ex parte
27 communications with members of the commission. The ~~counsel or his or~~

1 ~~her staff shall~~ DIRECTOR AND THE DIRECTOR'S STAFF have all rights and ~~be~~
2 ARE governed by the same ex parte rules as all other intervenors.

3 **SECTION 9.** In Colorado Revised Statutes, **amend** 40-6.5-107
4 as follows:

5 **40-6.5-107. Financing of office.** At each regular session, the
6 general assembly shall determine the ~~amounts~~ AMOUNT to be expended
7 by the office ~~of consumer counsel~~ for the direct and indirect costs of
8 administration in performing its duties and responsibilities required by
9 this ~~article~~ ARTICLE 6.5 and shall appropriate THE AMOUNT to the office
10 ~~of consumer counsel~~ from the public utilities commission fixed utility
11 fund created in section 40-2-114. ~~the full amount so determined. No~~ THE
12 GENERAL ASSEMBLY SHALL NOT APPROPRIATE MONEY FROM THE general
13 fund ~~moneys shall be appropriated~~ to the office ~~of consumer counsel~~ for
14 the performance of its duties and responsibilities under this ~~article~~
15 ARTICLE 6.5.

16 **SECTION 10.** In Colorado Revised Statutes, 24-1-122, **amend**
17 (2) introductory portion and (2)(a.5) as follows:

18 **24-1-122. Department of regulatory agencies - creation.**
19 (2) The department of regulatory agencies ~~shall consist~~ CONSISTS of the
20 following divisions:

21 (a.5) The office of ~~consumer counsel~~ THE UTILITY CONSUMER
22 ADVOCATE and the utility consumers' board, created ~~by~~ IN article 6.5 of
23 title 40. ~~C.R.S.~~ The office of ~~consumer counsel~~ THE UTILITY CONSUMER
24 ADVOCATE and its powers, duties, and functions are transferred by a **type**
25 **1** transfer to the department of regulatory agencies as a division ~~thereof~~
26 OF THE DEPARTMENT. The utility consumers' board shall exercise its
27 powers and perform its duties and functions under the department as if

1 the same were transferred to the department by a ~~type 1~~ **TYPE 2** transfer
2 and allocated to the office of ~~consumer counsel~~ THE UTILITY CONSUMER
3 ADVOCATE.

4 **SECTION 11.** In Colorado Revised Statutes, 40-2-114, **amend**
5 (2) as follows:

6 **40-2-114. Disposition of fees collected - telecommunications**
7 **utility fund - fixed utility fund.** (2) ~~Moneys~~ MONEY in the funds created
8 in subsection (1) of this section shall be expended only to defray the full
9 amount determined by the general assembly for the administrative
10 expenses of the commission for the supervision and regulation of the
11 public utilities paying the fees and for the financing of the office of
12 ~~consumer counsel~~ THE UTILITY CONSUMER ADVOCATE created in article
13 6.5 of this ~~title~~ TITLE 40. The state treasurer shall retain any unexpended
14 balance remaining in either fund at the end of any fiscal year to defray the
15 administrative expenses of the commission during subsequent fiscal
16 years, and the executive director of the department of revenue shall take
17 any such unexpended balance into account when computing the
18 percentage upon which fees for the ensuing fiscal year will be based.

19 **SECTION 12.** In Colorado Revised Statutes, 40-2-122, **amend**
20 (3)(c) introductory portion, (3)(c)(XI), (5), and (10) as follows:

21 **40-2-122. Natural gas - deregulation of supply - voluntary**
22 **separation of service offerings - consumer protection - legislative**
23 **declaration.** (3) (c) The commission shall not approve a plan submitted
24 pursuant to ~~paragraph (a) of this subsection (3)~~ SUBSECTION (3)(a) OF THIS
25 SECTION unless the price charged for natural gas delivery services does
26 not subsidize natural gas supply service under the plan and, in addition,
27 the plan:

1 (XI) Provides for funding of the commission and the office of
2 ~~consumer counsel~~ THE UTILITY CONSUMER ADVOCATE based upon a
3 charge to end-use customers, as determined by the commission, as a part
4 of the natural gas delivery function, regardless of the identity of the
5 natural gas supplier. Such new funding method ~~shall~~ MUST be
6 competitively neutral and shall be designed to generate annual revenues
7 equivalent to the average annual revenues generated under sections
8 40-2-109 to 40-2-114 during calendar years 1994 to 1998 associated with
9 the sale of natural gas service from the geographic area or group of
10 customers affected by the plan. Whenever such new funding method is
11 instituted for any specific geographic area or group of customers, the
12 natural gas public utilities serving ~~such~~ THE area or group shall no longer
13 pay the fees that would otherwise have been required under ~~said~~ THE
14 sections.

15 (5) The department of revenue is hereby authorized to collect
16 funding for the commission and the office of ~~consumer counsel~~ THE
17 UTILITY CONSUMER ADVOCATE in accordance with ~~subparagraph (XI) of~~
18 ~~paragraph (c) of subsection (3)~~ SUBSECTION (3)(c)(XI) of this section.

19 (10) The general assembly determines that a new funding formula
20 should be devised to adequately fund the commission's and office of
21 ~~consumer counsel's~~ THE UTILITY CONSUMER ADVOCATE'S administrative
22 expenses. On or before December 1, 2000, the commission and the office
23 ~~of consumer counsel~~ shall recommend to the general assembly those
24 legislative changes needed to develop appropriate funding mechanisms
25 for the public utilities commission and the office. ~~of consumer counsel.~~
26 This provision is intended to provide a comprehensive replacement for
27 the funding method contained in the utility plan under ~~subparagraph (XI)~~

1 of paragraph (c) of subsection (3) SUBSECTION (3)(c)(XI) of this section.

2 SECTION 13. In Colorado Revised Statutes, 40-3-104.3, amend
3 (1)(b) and (1)(e) as follows:

4 40-3-104.3. Manner of regulation - competitive responses -
5 definitions - repeal. (1) (b) (I) Following a notice period of five days
6 after the filing of an application under this section, the commission shall
7 approve or deny the application within thirty days. All applications filed
8 with the commission pursuant to this section shall be placed at the head
9 of the commission's docket and shall be disposed of promptly within the
10 time periods set forth in this paragraph (b) SUBSECTION (1)(b)(I); except
11 that, for good cause shown, the commission may extend the period in
12 which it must act for an additional fifteen days, or, in extraordinary
13 circumstances, including but not limited to the existence of numerous
14 pending applications under this section, the commission may extend the
15 period in which it must act for an additional thirty days beyond the fifteen
16 days provided for in this paragraph (b) SUBSECTION (1)(b)(I).

17 (II) Whenever such THE application is continued as provided in
18 this paragraph (b) SUBSECTION (1)(b)(I) OF THIS SECTION, the commission
19 shall enter an order making such THE continuance and stating fully the
20 facts necessitating the continuance. If the commission has not approved
21 or denied any such AN application within the time periods set forth in this
22 paragraph (b) SUBSECTION (1)(b)(I) OF THIS SECTION, the application shall
23 be deemed approved. If the commission denies any such AN application
24 for approval within the permitted period, the subject contract shall DOES
25 not become effective.

26 (III) Any contract submitted pursuant to this section shall be filed
27 under seal and treated as confidential by the commission; except that, at

1 the time the applicant files an application or contract with the
2 commission, the applicant shall also furnish a copy of the application to
3 any public utility then providing electric, gas, or steam service in the state
4 of Colorado to the customer, and also furnish a copy to the office of
5 ~~consumer counsel, and~~ the UTILITY CONSUMER ADVOCATE, WHICH office
6 ~~of consumer counsel~~ shall also treat ~~said~~ THE contract as confidential.

7 (e) Within ten days after the execution of ~~such~~ THE contract, the
8 public utility shall file with the commission under seal and as a
9 confidential document the final contract or other description of the price
10 and terms of service, together with any additional information required by
11 the commission. The applicant shall also furnish a copy of ~~such~~ THE
12 information to the office of ~~consumer counsel, who~~ THE UTILITY
13 CONSUMER ADVOCATE, WHICH OFFICE shall treat the information as
14 confidential. The commission ~~shall have~~ HAS no authority to disapprove
15 the contract if the contract complies with the conditions contained in
16 ~~paragraph (a) of this subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION,
17 but the commission may consider the contract for general regulatory
18 purposes and to ensure compliance with the requirements of this section.

19 **SECTION 14. Effective date.** This act takes effect September 1,
20 2021.

21 **SECTION 15. Safety clause.** The general assembly hereby finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, or safety.