

CHAPTER 217

PUBLIC UTILITIES

SENATE BILL 93-3

BY SENATORS Tebedo, Schaffer, Gallagher, Johnson, Mares, Martinez, Mendez, Ruddick, and Thiebaut;
also REPRESENTATIVES Owen, Acquafresca, Benavidez, Chlouber, DeGette, Fleming, Gordon, Hagedorn, R. Hernandez, Knox,
Martin, Morrison, Rupert, Shoemaker, Snyder, and Wright.

AN ACT

CONCERNING THE OFFICE OF CONSUMER COUNSEL, AND, IN CONNECTION THEREWITH, PROVIDING FOR THE CONTINUATION OF SUCH OFFICE AND TRANSFERRING SUCH OFFICE TO THE DEPARTMENT OF REGULATORY AGENCIES, AND TRANSFERRING APPROPRIATIONS THEREFOR.

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

SECTION 1. 24-1-113 (3) (c), Colorado Revised Statutes, 1988 Repl. Vol., is repealed as follows:

24-1-113. Department of law - creation. (3) The department of law shall consist of the following divisions:

(c) ~~Office of consumer counsel, the head of which shall be the consumer counsel, created by article 6.5 of title 40, C.R.S. The office of consumer counsel and the consumer counsel shall exercise their powers and perform their duties and functions under the department of law as if the same were transferred by a **type 2** transfer.~~

SECTION 2. 24-1-122 (2), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-1-122. Department of regulatory agencies - creation. (2) The department of regulatory agencies shall consist of the following divisions:

(a.5) THE OFFICE OF CONSUMER COUNSEL AND THE UTILITY CONSUMERS' BOARD, CREATED BY ARTICLE 6.5 OF TITLE 40, C.R.S. THE OFFICE OF CONSUMER COUNSEL AND ITS POWERS, DUTIES, AND FUNCTIONS ARE TRANSFERRED BY A **TYPE 1** TRANSFER TO THE DEPARTMENT OF REGULATORY AGENCIES AS A DIVISION THEREOF. 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.

UTILITY CONSUMERS' BOARD SHALL EXERCISE ITS POWERS AND PERFORM ITS DUTIES AND FUNCTIONS UNDER THE DEPARTMENT AS IF THE SAME WERE TRANSFERRED TO THE DEPARTMENT BY A **TYPE 1** TRANSFER AND ALLOCATED TO THE OFFICE OF CONSUMER COUNSEL.

SECTION 3. 24-31-102 (1) (c), Colorado Revised Statutes, 1988 Repl. Vol., is repealed as follows:

24-31-102. Offices and divisions. (1) The department of law, the chief executive officer of which shall be the attorney general, shall consist of the following offices, boards, and divisions:

(c) ~~The office of consumer counsel, including the consumer counsel, created by article 6.5 of title 40, C.R.S.~~

SECTION 4. 40-6.5-102, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

40-6.5-102. Office of consumer counsel - creation - appointment - attorney general to represent. (1) There is hereby created, as a division within the department of law REGULATORY AGENCIES, the office of consumer counsel, the head of which shall be the consumer counsel, who shall be appointed by the ~~attorney general~~ EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES pursuant to section 13 of article XII of the state constitution.

(2) (a) The office of consumer counsel ~~and the consumer counsel~~ shall exercise ~~their~~ ITS powers and perform ~~their~~ ITS duties and functions specified in this article under the department of law ~~and the attorney general~~ REGULATORY AGENCIES as if the same were transferred to the department by a **type 2 1** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(b) (I) ON JULY 1, 1993, ALL EMPLOYEES OF THE OFFICE OF CONSUMER COUNSEL, EXCEPT FOR THOSE EMPLOYEES WHO ARE ATTORNEYS AT LAW SERVING AS ASSISTANT ATTORNEYS GENERAL OR SUPPORT STAFF TO SUCH ATTORNEYS, WHOSE PRINCIPAL DUTIES ARE CONCERNED WITH THE DUTIES AND FUNCTIONS TRANSFERRED TO THE OFFICE OF CONSUMER COUNSEL IN THE DEPARTMENT OF REGULATORY AGENCIES PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) AND WHOSE EMPLOYMENT IN THE OFFICE OF CONSUMER COUNSEL IS DEEMED NECESSARY BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES TO CARRY OUT THE PURPOSES OF THIS ARTICLE SHALL BE TRANSFERRED TO THE OFFICE OF CONSUMER COUNSEL IN THE DEPARTMENT OF REGULATORY AGENCIES AND SHALL BECOME EMPLOYEES THEREOF. SUCH EMPLOYEES SHALL RETAIN ALL RIGHTS TO THE STATE PERSONNEL SYSTEM AND RETIREMENT BENEFITS UNDER THE LAWS OF THIS STATE, AND THEIR SERVICES SHALL BE DEEMED TO HAVE BEEN CONTINUOUS. ALL TRANSFERS AND ANY ABOLISHMENT OF POSITIONS IN THE STATE PERSONNEL SYSTEM SHALL BE MADE AND PROCESSED IN ACCORDANCE WITH THE STATE PERSONNEL SYSTEM LAWS AND RULES AND REGULATIONS.

(II) ON JULY 1, 1993, ALL ITEMS OF PROPERTY, REAL AND PERSONAL, INCLUDING OFFICE FURNITURE AND FIXTURES, BOOKS, DOCUMENTS, AND RECORDS OF THE OFFICE OF CONSUMER COUNSEL PERTAINING TO THE DUTIES AND FUNCTIONS TRANSFERRED

TO THE OFFICE OF CONSUMER COUNSEL IN THE DEPARTMENT OF REGULATORY AGENCIES PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) ARE TRANSFERRED TO THE OFFICE OF CONSUMER COUNSEL IN THE DEPARTMENT OF REGULATORY AGENCIES AND SHALL BECOME THE PROPERTY THEREOF.

(3) (a) THE OFFICE OF CONSUMER COUNSEL SHALL BE UNDER THE POLICY GUIDANCE OF THE UTILITY CONSUMERS' BOARD, WHICH BOARD IS HEREBY CREATED. THE BOARD SHALL EXERCISE ITS POWERS AND PERFORM ITS DUTIES AND FUNCTIONS SPECIFIED IN THIS ARTICLE UNDER THE DEPARTMENT OF REGULATORY AGENCIES AND THE EXECUTIVE DIRECTOR THEREOF AS IF THE SAME WERE TRANSFERRED TO THE DEPARTMENT BY A **TYPE 1** TRANSFER, AS SUCH TRANSFER IS DEFINED IN THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968", ARTICLE 1 OF TITLE 24, C.R.S.

(b) THE BOARD SHALL CONSIST OF ELEVEN MEMBERS APPOINTED BY THE GOVERNOR. SUCH MEMBERS SHALL BE APPOINTED TO REPRESENT RESIDENTIAL, SMALL BUSINESS, AND AGRICULTURAL UTILITY CONSUMERS. SUCH MEMBERS SHALL, TO THE EXTENT POSSIBLE, BE PERSONS WITH EXPERTISE OR EXPERIENCE IN CONSUMER RELATED UTILITY MATTERS, UTILITIES MANAGEMENT, ECONOMICS, ACCOUNTING, FINANCING, ENGINEERING, PLANNING, OR UTILITIES LAW. IN MAKING APPOINTMENTS TO THE BOARD, THE GOVERNOR SHALL ENSURE THAT THE MEMBERSHIP OF THE BOARD REPRESENTS THE DIFFERENT GEOGRAPHIC AREAS OF THE STATE. OF THE MEMBERS OF THE BOARD APPOINTED FOR TERMS BEGINNING JULY 1, 1993, FIVE OF SUCH MEMBERS SHALL BE APPOINTED FOR TERMS OF TWO YEARS AND SIX SHALL BE APPOINTED FOR TERMS OF FOUR YEARS. THEREAFTER, MEMBERS OF THE BOARD SHALL BE APPOINTED FOR TERMS OF FOUR YEARS. THE GOVERNOR SHALL NOT APPOINT ANY MEMBER OF THE BOARD IF SUCH PERSON HAS ANY CONFLICT OF INTEREST WITH SUCH PERSON'S DUTIES AS A MEMBER OF THE BOARD. THE GOVERNOR MAY REMOVE ANY BOARD MEMBER FOR MISCONDUCT, INCOMPETENCE, OR NEGLIGENCE OF DUTY. BOARD MEMBERS SHALL SERVE WITHOUT COMPENSATION, BUT MEMBERS WHO RESIDE OUTSIDE THE COUNTIES OF DENVER, JEFFERSON, ADAMS, ARAPAHOE, BOULDER, AND DOUGLAS SHALL BE ENTITLED TO REIMBURSEMENT FOR REASONABLE ACTUAL EXPENSES TO ATTEND BOARD MEETINGS IN DENVER. THE BOARD SHALL MEET AT LEAST SIX TIMES PER YEAR.

(c) IT IS THE DUTY OF THE BOARD TO REPRESENT THE PUBLIC INTEREST OF COLORADO UTILITY USERS AND, SPECIFICALLY, THE INTERESTS OF RESIDENTIAL, AGRICULTURAL, AND SMALL BUSINESS USERS, BY PROVIDING GENERAL POLICY GUIDANCE AND OVERSIGHT FOR THE OFFICE OF CONSUMER COUNSEL AND THE CONSUMER COUNSEL IN THE PERFORMANCE OF THEIR STATUTORY DUTIES AND RESPONSIBILITIES AS SPECIFIED IN THIS ARTICLE. THE POWERS AND DUTIES OF THE BOARD SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

(I) PROVIDING GENERAL POLICY GUIDANCE TO THE OFFICE OF CONSUMER COUNSEL REGARDING RULE-MAKING MATTERS, LEGISLATIVE PROJECTS, GENERAL ACTIVITIES, AND PRIORITIES OF THE OFFICE;

(II) GATHERING DATA AND INFORMATION AND FORMULATING POLICY POSITIONS TO ADVISE THE OFFICE OF CONSUMER COUNSEL IN PREPARING ANALYSIS AND TESTIMONY IN LEGISLATIVE HEARINGS ON PROPOSED LEGISLATION AFFECTING THE INTERESTS OF RESIDENTIAL, SMALL BUSINESS, AND AGRICULTURAL UTILITY USERS;

(III) REVIEWING THE PERFORMANCE OF THE OFFICE OF CONSUMER COUNSEL ANNUALLY AND REPORTING EACH SUCH EVALUATION BY JANUARY 30 OF EACH YEAR TO THE BUSINESS AFFAIRS AND LABOR COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES. EACH SUCH REPORT SHALL BE MADE AVAILABLE TO ALL MEMBERS OF THE GENERAL ASSEMBLY.

(IV) CONFERRING WITH THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES ON THE HIRING OF THE CONSUMER COUNSEL AND CONSULTING WITH SUCH EXECUTIVE DIRECTOR ON THE ANNUAL PERFORMANCE EVALUATION OF THE OFFICE OF CONSUMER COUNSEL AND THE CONSUMER COUNSEL.

(4) IT IS THE DUTY OF THE ATTORNEY GENERAL TO ADVISE THE OFFICE OF CONSUMER COUNSEL AND THE BOARD IN ALL LEGAL MATTERS AND TO PROVIDE REPRESENTATION IN PROCEEDINGS IN WHICH THE OFFICE OF CONSUMER COUNSEL PARTICIPATES.

SECTION 5. 40-6.5-108, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

40-6.5-108. Office of consumer counsel subject to termination. (1) Unless continued by the general assembly, the office of consumer counsel AND THE UTILITY CONSUMERS' BOARD shall terminate on ~~July 1, 1993~~ JULY 1, 1998.

(2) ~~The provisions of section 24-34-104 (5) to (12), C.R.S., concerning a wind-up period, an analysis and evaluation, public hearings, and claims by or against an agency shall apply to the office of consumer counsel; except that the attorney general shall perform the duties of the executive director of the department of regulatory agencies set forth under such section and the factors listed in section 24-34-104 (9) (b), C.R.S., which are applicable only to regulatory agencies shall not be considered.~~ THE TERMINATION SCHEDULE FOR REGULATORY BODIES OF THE STATE UNLESS EXTENDED AS PROVIDED IN THAT SECTION, ARE APPLICABLE TO THE OFFICE OF CONSUMER COUNSEL AND THE UTILITY CONSUMERS' BOARD.

SECTION 6. 40-6.5-109, Colorado Revised Statutes, 1984 Repl. Vol., is repealed as follows:

~~**40-6.5-109. Consumer counsel report.** The consumer counsel shall report to the general assembly no later than July 1, 1987, all of the moneys which the existence of the counsel has saved consumers as defined herein due to the existence of the counsel between July 1, 1984, and July 1, 1987.~~

SECTION 7. 24-34-104 (27.5), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (27.5) (f) THE FOLLOWING DIVISION AND BOARD IN THE DEPARTMENT OF REGULATORY AGENCIES SHALL TERMINATE JULY 1, 1998: THE UTILITY CONSUMERS' BOARD AND THE OFFICE OF CONSUMER COUNSEL, CREATED IN ARTICLE 6.5 OF TITLE 40, C.R.S.

SECTION 8. Transfer of appropriations. (1) Any appropriation made in the

general appropriation act for the fiscal year beginning July 1, 1993, to the department of law for allocation to the office of consumer counsel for program operations is hereby transferred to the department of regulatory agencies for allocation to the office of consumer counsel for the implementation of this act. Any appropriation made in the general appropriation act for the fiscal year beginning July 1, 1993, to the department of law for legal services for the office of consumer counsel shall remain with the department of law for the implementation of this act.

(2) From amounts appropriated to the department of law for the office of consumer counsel in the general appropriations act for the fiscal year beginning July 1, 1992, the office of consumer counsel is authorized to spend an amount necessary to effect office space relocation. Such amount shall be transferred from the appropriation from the fixed utility fund allocated to the office of consumer counsel in the department of law to the department of regulatory agencies to accomplish this relocation. This subsection (2) authorizing spending authority from existing fiscal year 1992 funds for office relocation for the office of consumer counsel shall become effective upon passage of this act.

SECTION 9. Effective date. Subsection (2) of section 8 of this act, this section, and section 10 of this act shall take effect upon passage. The remainder of this act shall take effect July 1, 1993.

SECTION 10. 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 2, 1993