

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

DRAFT
1.8.15

DRAFT

LLS NO. 15-0199.01 Jennifer Berman x3286

SUNSET BILL

Sunset Process - Senate Agriculture,
Natural Resources, and Energy Committee

BILL TOPIC: "Sunset Office Of Consumer Counsel"
DEADLINES: Finalize by: 06 JAN 2015 File by: 09 JAN 2015

A BILL FOR AN ACT

101 CONCERNING THE CONTINUATION OF THE OFFICE OF CONSUMER
102 COUNSEL, AND, IN CONNECTION THEREWITH, IMPLEMENTING
103 THE RECOMMENDATIONS OF THE 2014 SUNSET REPORT BY THE
104 DEPARTMENT OF REGULATORY AGENCIES.

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/bills summaries>.)

Sunset Process - Senate Agriculture, Natural Resources, and Energy Committee. The bill implements the recommendations contained in the department of regulatory agencies' sunset report on the office of

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

consumer counsel by:

- Changing the name of the office of consumer counsel to the office of the utility consumer advocate and changing the title of consumer counsel to director, and making conforming amendments; and
- Continuing the office of utility consumer advocate for 11 years to 2026.

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 (46) (g); and **add** (57) as follows:

4 **24-34-104. General assembly review of regulatory agencies**
5 **and functions for termination, continuation, or reestablishment.**

6 (46) The following agencies, functions, or both shall terminate on July
7 1, 2015:

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

10 (57) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, TERMINATE
11 ON SEPTEMBER 1, 2026:

12 (a) THE OFFICE OF THE UTILITY CONSUMER ADVOCATE, CREATED
13 IN ARTICLE 6.5 OF TITLE 40, C.R.S.

14 **SECTION 2.** In Colorado Revised Statutes, 40-6.5-101, **add** (2.5)
15 as follows:

16 **40-6.5-101. Definitions.** As used in this article, unless the context
17 otherwise requires:

18 (2.5) "DIRECTOR" MEANS THE DIRECTOR OF THE OFFICE OF THE
19 UTILITY CONSUMER ADVOCATE.

20 **SECTION 3.** In Colorado Revised Statutes, 40-6.5-102, **amend**
21 (1), (2), (3) (a), (3) (c), and (4) as follows:

22 **40-6.5-102. Office of the utility consumer advocate - creation**

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

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

13 (b) ~~(f) On July 1, 1993, all employees of the office of consumer~~
14 ~~counsel, except for those employees who are attorneys at law serving as~~
15 ~~assistant attorneys general or support staff to such attorneys, whose~~
16 ~~principal duties are concerned with the duties and functions transferred~~
17 ~~to the office of consumer counsel in the department of regulatory~~
18 ~~agencies pursuant to paragraph (a) of this subsection (2) and whose~~
19 ~~employment in the office of consumer counsel is deemed necessary by the~~
20 ~~executive director of the department of regulatory agencies to carry out~~
21 ~~the purposes of this article shall be transferred to the office of consumer~~
22 ~~counsel in the department of regulatory agencies and shall become~~
23 ~~employees thereof. Such employees shall retain all rights to the state~~
24 ~~personnel system and retirement benefits under the laws of this state, and~~
25 ~~their services shall be deemed to have been continuous. All transfers and~~
26 ~~any abolishment of positions in the state personnel system shall be made~~
27 ~~and processed in accordance with the state personnel system laws and~~

1 ~~rules and regulations.~~

2 ~~(H) On July 1, 1993, all items of property, real and personal,~~
3 ~~including office furniture and fixtures, books, documents, and records of~~
4 ~~the office of consumer counsel pertaining to the duties and functions~~
5 ~~transferred to the office of consumer counsel in the department of~~
6 ~~regulatory agencies pursuant to paragraph (a) of this subsection (2) are~~
7 ~~transferred to the office of consumer counsel in the department of~~
8 ~~regulatory agencies and shall become the property thereof.~~

9 (3) (a) The UTILITY CONSUMERS' BOARD, WHICH IS HEREBY
10 CREATED, SHALL GUIDE THE POLICY OF THE office of ~~consumer counsel~~
11 ~~shall be under the policy guidance of the utility consumers' board, which~~
12 ~~board is hereby created~~ THE UTILITY CONSUMER ADVOCATE. The board
13 shall exercise its powers and perform its duties and functions specified in
14 this article under the department of regulatory agencies and the executive
15 director ~~thereof~~ OF THE DEPARTMENT OF REGULATORY AGENCIES as if the
16 same were transferred to the department by a **type 1** transfer, as such
17 transfer is defined in the "Administrative Organization Act of 1968",
18 article 1 of title 24, C.R.S.

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

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

1 ~~counsel~~ THE UTILITY CONSUMER ADVOCATE regarding rule-making
2 matters, legislative projects, general activities, and priorities of the office;

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

8 (III) Reviewing the performance of the office of ~~consumer~~
9 ~~counsel~~ THE UTILITY CONSUMER ADVOCATE annually;

10 (IV) Conferring with the executive director of the department of
11 regulatory agencies on the hiring of the ~~consumer counsel~~ DIRECTOR and
12 consulting with ~~such~~ THE executive director on the annual performance
13 evaluation of the office of ~~consumer counsel~~ THE UTILITY CONSUMER
14 ADVOCATE and the ~~consumer counsel~~ DIRECTOR.

15 (4) ~~It is the duty of~~ The attorney general ~~to~~ SHALL advise the
16 office of ~~consumer counsel~~ THE UTILITY CONSUMER ADVOCATE and the
17 board in all legal matters and ~~to~~ provide representation in proceedings in
18 which the office of ~~consumer counsel~~ THE UTILITY CONSUMER ADVOCATE
19 participates.

20 **SECTION 4.** In Colorado Revised Statutes, **amend** 40-6.5-103
21 as follows:

22 **40-6.5-103. Qualifications - conflict of interest.** The ~~consumer~~
23 ~~counsel shall~~ DIRECTOR MUST have at least five years of experience in
24 consumer-related utility issues or in the operation, management, or
25 regulation of utilities as either an attorney, an engineer, an economist, an
26 accountant, a financial analyst, or an administrator or any combination
27 ~~thereof~~ OF THOSE PROFESSIONS. No person owning stocks or bonds in a

1 corporation subject in whole or in part to regulation by the commission
2 or who has any pecuniary interest in ~~such~~ THE corporation ~~shall be~~
3 ~~appointed as consumer counsel~~ IS ELIGIBLE TO SERVE AS THE DIRECTOR.

4 **SECTION 5.** In Colorado Revised Statutes, **amend** 40-6.5-104
5 as follows:

6 **40-6.5-104. Representation by the director.** (1) The ~~consumer~~
7 ~~counsel~~ DIRECTOR shall represent the public interest and, to the extent
8 consistent therewith, the specific interests of residential consumers,
9 agricultural consumers, and small business consumers by appearing in
10 proceedings before the commission and appeals ~~therefrom in matters~~
11 ~~which involve~~ FROM THE PROCEEDINGS INVOLVING:

- 12 (a) Proposed changes in a public utility's rates and charges;
- 13 (b) ~~in matters involving~~ Rule-making ~~which have~~ THAT HAS an
14 impact on the charges, the provision of services, or the rates to
15 consumers; and
- 16 (c) ~~in matters which involve~~ Certificates of public convenience
17 and necessity for facilities employed in the provision of utility service, the
18 construction of which would have a material effect on the utility's rates
19 and charges.

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

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

7 (3) The ~~consumer counsel~~ DIRECTOR shall be served with notices
8 of all proposed gas, electric, and telephone tariffs, and he OR SHE shall be
9 served with copies of all orders of the commission affecting the charges
10 of agricultural consumers, residential consumers, and small business
11 consumers.

12 **SECTION 6.** In Colorado Revised Statutes, 40-6.5-105 **amend**
13 (1) introductory portion, (1) (a), and (1) (g) as follows:

14 **40-6.5-105. Intervenor other than the office of the utility**
15 **consumer advocate.** (1) If the office of ~~consumer counsel~~ THE UTILITY
16 CONSUMER ADVOCATE intervenes and there are other intervenors in
17 proceedings before the commission, the COMMISSION SHALL BASE ITS
18 determination of ~~said commission with regard to~~ the payment of expenses
19 of intervenors, other than the office of ~~consumer counsel~~ THE UTILITY
20 CONSUMER ADVOCATE, and the amounts ~~thereof shall be based~~ OF THE
21 EXPENSES on the following considerations:

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

25 (g) The ~~payment of~~ COMMISSION SHALL NOT PAY THE expenses of
26 other intervenors who are in direct competition with a public utility
27 involved in proceedings before the commission. ~~is prohibited.~~

1 **SECTION 7.** In Colorado Revised Statutes, **amend** 40-6.5-106
2 as follows:

3 **40-6.5-106. Powers of the director.** (1) ~~The consumer counsel~~
4 DIRECTOR:

5 (a) May employ ~~such~~ attorneys, engineers, economists,
6 accountants, or other employees as may be necessary to carry out ~~his~~ THE
7 DIRECTOR'S duties and shall employ a maximum of sixteen full-time
8 employees or ~~the~~ THEIR equivalent; ~~thereof~~;

9 (b) Shall be granted, by the commission, leave to intervene in all
10 cases where ~~such~~ A request TO INTERVENE is made in conformance with
11 rules of the commission;

12 (c) May contract for the services of technically qualified persons
13 to perform research and to appear as expert witnesses before the
14 commission, ~~such~~ AND THE DIRECTOR MAY PAY THESE TECHNICALLY
15 QUALIFIED persons ~~to be paid~~ from funds appropriated for the DIRECTOR'S
16 use; ~~of the consumer counsel~~;

17 (d) May have access to the files of the commission when
18 conducting research.

19 (2) ~~The consumer counsel~~ DIRECTOR may petition for, request,
20 initiate, and appear and intervene as a party in any proceeding before the
21 commission concerning rate changes, rule-making, charges, tariffs,
22 modifications of service, and matters involving certificates of public
23 convenience and necessity. Notwithstanding any provision of this article
24 to the contrary, ~~the consumer counsel~~ DIRECTOR shall not ~~be~~ SERVE AS A
25 party to any individual complaint between a utility and an individual.

26 (2.5) ~~The consumer counsel~~ DIRECTOR may petition for, request,
27 initiate, or seek to intervene in any proceeding before a federal agency

1 ~~which~~ THAT regulates utility rates or service, or BEFORE A federal court,
2 when the matter before ~~such~~ THE agency or court will affect a rate,
3 charge, tariff, or term of service for a utility product or service for a
4 residential, small business, or agricultural utility consumer in the state of
5 Colorado. The phrase "federal agency ~~which~~ THAT regulates utility rates
6 or service" does not include ~~any~~ A federal lending agency.

7 (3) (a) The ~~consumer counsel~~ DIRECTOR and any member of his
8 or her staff directly involved in a specific adjudicatory proceeding before
9 the commission shall refrain from ex parte communications with
10 members of the commission. The ~~counsel~~ DIRECTOR or his or her staff
11 ~~shall~~ have all rights OF, and ~~be~~ ARE governed by the same ex parte rules
12 as, all other intervenors.

13 (b) As used in this subsection (3), an "adjudicatory proceeding"
14 does not include a rule-making proceeding or discussions on pending
15 legislative proposals.

16 **SECTION 8.** In Colorado Revised Statutes, **amend** 40-6.5-107
17 as follows:

18 **40-6.5-107. Financing of office.** At each regular session, the
19 general assembly shall determine the amounts to be expended by the
20 office of ~~consumer counsel~~ THE UTILITY CONSUMER ADVOCATE for the
21 direct and indirect costs of administration in performing its duties and
22 responsibilities required by this article and shall appropriate to the office
23 of ~~consumer counsel~~ THE UTILITY CONSUMER ADVOCATE from the public
24 utilities commission fixed utility fund created in section 40-2-114 the full
25 amount so determined. No general fund moneys shall be appropriated to
26 the office of ~~consumer counsel~~ THE UTILITY CONSUMER ADVOCATE for the
27 performance of its duties and responsibilities under this article.

1 **SECTION 9.** In Colorado Revised Statutes 40-6.5-108, **amend**
2 (1) (c) and (2) as follows:

3 **40-6.5-108. Office of the utility consumer advocate subject to**
4 **termination.** (1) Unless continued by the general assembly:

5 (c) The office of THE UTILITY consumer ~~counsel shall terminate~~
6 ADVOCATE TERMINATES on ~~July 1, 2015~~ SEPTEMBER 1, 2026.

7 (2) The provisions of section 24-34-104, C.R.S., concerning the
8 termination schedule for regulatory bodies of the state unless extended as
9 provided in that section, are applicable to the office of ~~consumer counsel~~
10 THE UTILITY CONSUMER ADVOCATE and the utility consumers' board.

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

13 **24-1-122. Department of regulatory agencies - creation.**

14 (2) The department of regulatory agencies ~~shall consist~~ CONSISTS of the
15 following divisions:

16 (a.5) The office of ~~consumer counsel~~ THE UTILITY CONSUMER
17 ADVOCATE and the utility consumers' board, created by article 6.5 of title
18 40, C.R.S. The office of ~~consumer counsel~~ THE UTILITY CONSUMER
19 ADVOCATE and its powers, duties, and functions are transferred by a **type**
20 **1** transfer to the department of regulatory agencies as a division thereof.
21 The utility consumers' board shall exercise its powers and perform its
22 duties and functions under the department as if the same were transferred
23 to the department by a **type 1** transfer and allocated to the office of
24 ~~consumer counsel~~ THE UTILITY CONSUMER ADVOCATE.

25 **SECTION 11.** In Colorado Revised Statutes, **amend** 40-2-114
26 as follows:

27 **40-2-114. Disposition of fees collected.** All fees collected under

1 section 40-2-113 by the department of revenue shall be remitted to the
2 state treasurer and credited by him OR HER as follows: Three percent to
3 the general fund and ninety-seven percent to the public utilities
4 commission fixed utility fund, which ~~fund~~ is hereby created and shall be
5 expended only to defray the full amount determined by the general
6 assembly for the administrative expenses of the commission for the
7 supervision and regulation of the public utilities paying ~~such~~ THE fees and
8 for the financing of the office of ~~consumer counsel~~ THE UTILITY
9 CONSUMER ADVOCATE created in article 6.5 of this title. Any unexpended
10 balance remaining in ~~said~~ THE fund at the end of any fiscal year shall be
11 retained by the state treasurer to defray ~~such~~ THE administrative expenses
12 of the commission during subsequent fiscal years, and the executive
13 director of the department of revenue shall take any ~~such~~ unexpended
14 balance into account when computing the percentage upon which fees for
15 the ensuing fiscal year shall be based.

16 **SECTION 12.** In Colorado Revised Statutes, 40-2-122, **amend**
17 (3) (c) (XI) and (5); and **repeal** (10) as follows:

18 **40-2-122. Natural gas - deregulation of supply - voluntary**
19 **separation of service offerings - consumer protection - legislative**
20 **declaration.** (3) (c) The commission shall not approve a plan submitted
21 pursuant to paragraph (a) of this subsection (3) unless the price charged
22 for natural gas delivery services does not subsidize natural gas supply
23 service under the plan and, in addition, the plan:

24 (XI) Provides for funding of the commission and the office of
25 ~~consumer counsel~~ THE UTILITY CONSUMER ADVOCATE based upon a
26 charge to end-use customers, as determined by the commission, as a part
27 of the natural gas delivery function, regardless of the identity of the

1 natural gas supplier. ~~Such~~ THE new funding method ~~shall~~ MUST be
2 competitively neutral and ~~shall be~~ designed to generate annual revenues
3 equivalent to the average annual revenues generated under sections
4 40-2-109 to 40-2-114 during calendar years 1994 to 1998 associated with
5 the sale of natural gas service from the geographic area or group of
6 customers affected by the plan. Whenever ~~such~~ A new funding method is
7 instituted for any specific geographic area or group of customers, the
8 natural gas public utilities serving ~~such~~ THE area or group ~~shall~~ NEED no
9 longer pay the fees that would otherwise have been required under ~~said~~
10 sections 40-2-109 TO 40-2-114.

11 (5) The department of revenue ~~is hereby authorized to~~ MAY collect
12 funding for the commission and the office of ~~consumer counsel~~ THE
13 UTILITY CONSUMER ADVOCATE in accordance with subparagraph (XI) of
14 paragraph (c) of subsection (3) of this section.

15 (10) ~~The general assembly determines that a new funding formula~~
16 ~~should be devised to adequately fund the commission's and office of~~
17 ~~consumer counsel's administrative expenses. On or before December 1,~~
18 ~~2000, the commission and the office of consumer counsel shall~~
19 ~~recommend to the general assembly those legislative changes needed to~~
20 ~~develop appropriate funding mechanisms for the public utilities~~
21 ~~commission and the office of consumer counsel. This provision is~~
22 ~~intended to provide a comprehensive replacement for the funding method~~
23 ~~contained in the utility plan under subparagraph (XI) of paragraph (c) of~~
24 ~~subsection (3) of this section.~~

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

27 **40-3-104.3. Manner of regulation - competitive responses.** (1)

1 (b) Following a notice period of five days after the filing of an
2 application under this section, the commission shall approve or deny the
3 application within thirty days. All applications filed with the commission
4 pursuant to this section shall be placed at the head of the commission's
5 docket and shall be disposed of promptly within the time periods set forth
6 in this paragraph (b); except that, for good cause shown, the commission
7 may extend the period in which it must act for an additional fifteen days,
8 or, in extraordinary circumstances, including ~~but not limited to~~ the
9 existence of numerous pending applications under this section, the
10 commission may extend the period in which it must act for an additional
11 thirty days beyond the fifteen days provided for in this paragraph (b).
12 Whenever ~~such~~ AN application is continued as provided in this paragraph
13 (b), the commission shall enter an order ~~making such~~ APPROVING THE
14 continuance and stating fully the facts necessitating the continuance. If
15 the commission has not approved or denied ~~any such~~ AN application
16 within the time periods set forth in this paragraph (b), the application
17 ~~shall be~~ IS deemed approved. If the commission denies ~~any such~~ AN
18 application for approval within the permitted period, the subject contract
19 ~~shall~~ DOES not become effective. Any contract submitted pursuant to this
20 section shall be filed under seal and treated as confidential by the
21 commission; except that at the time the applicant files an application or
22 contract with the commission, the applicant shall also furnish a copy of
23 the application to any public utility then providing electric, gas, or steam
24 service in the state of Colorado to the customer, and also furnish a copy
25 to the office of ~~consumer counsel~~ THE UTILITY CONSUMER ADVOCATE, and
26 the office of ~~consumer counsel~~ THE UTILITY CONSUMER ADVOCATE shall
27 also treat ~~said~~ THE contract as confidential.

1 (e) Within ten days after the execution of ~~such~~ THE contract, the
2 public utility shall file with the commission under seal and as a
3 confidential document the final contract or other description of the price
4 and terms of service, together with any additional information required by
5 the commission. The applicant shall also furnish a copy of ~~such~~ THE
6 information to the office of ~~consumer counsel~~ THE UTILITY CONSUMER
7 ADVOCATE, who shall treat the information as confidential. The
8 commission shall ~~have no authority to~~ NOT disapprove the contract if the
9 contract complies with the conditions contained in paragraph (a) of this
10 subsection (1), but the commission may consider the contract for general
11 regulatory purposes and to ensure compliance with the requirements of
12 this section.

13 **SECTION 14. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.