

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

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

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, [REDACTED] PROVIDING FOR PERIODIC**
107 **PERFORMANCE AUDITS, AND, MAKING AN APPROPRIATION.**

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.

HOUSE
Amended 2nd Reading
April 28, 2017

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

11 **SECTION 4.** In Colorado Revised Statutes, **amend** 40-2-106 as
12 follows:

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

23

24 **SECTION 5.** In Colorado Revised Statutes, 40-6-123, **amend** (1)
25 and (3) as follows:

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

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

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

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

12 (II) A STATEMENT OF INCOMPATIBLE ACTIVITIES; AND

13 (III) LIMITATIONS ON EX PARTE COMMUNICATIONS.

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

23 **SECTION 6. Appropriation.** (1) For the 2017-18 state fiscal
24 year, \$22,812 is appropriated to the department of regulatory agencies.
25 This appropriation consists of \$9,695 from the public utilities commission
26 fixed utility fund created in section 40-2-114 (1)(b)(II), C.R.S., \$9,695
27 from the telecommunication utility fund created in section 40-2-114

1 (1)(b)(I), C.R.S., and \$3,422 from the public utilities commission motor
2 carrier fund created in section 40-2-110.5 (6), C.R.S. To implement this
3 act, the department may use this appropriation for the purchase of legal
4 services.

5 (2) For the 2017-18 state fiscal year, \$22,812 is appropriated to
6 the department of law. This appropriation is from reappropriated funds
7 received from the department of regulatory agencies under subsection (1)
8 of this section and is based on an assumption that the department of law
9 will require an additional 0.1 FTE. To implement this act, the department
10 of law may use this appropriation to provide legal services for the
11 department of regulatory agencies.

12 **SECTION 7. Effective date.** This act takes effect July 1, 2017.

13 **SECTION 8. 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.