



CO L O R A D O

**Department of
Regulatory Agencies**

**2014 Sunset Review:
Colorado Pay Equity Commission
Colorado Voter Access and Modernized
Elections Commission**

*Office of Policy, Research and Regulatory Reform
October 15, 2014*



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2014

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed its evaluations of the Colorado Pay Equity Commission and the Colorado Voter Access and Modernized Elections Commission. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2015 legislative committees of reference. The report is submitted pursuant to section 2-3-1203(2)(b)(III), Colorado Revised Statutes, which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section. The department of regulatory agencies shall submit a report to the office of legislative legal services by October 15 of the year preceding the date established for termination.

The report discusses the effectiveness of the committees in carrying out the intention of the statutes and makes recommendations as to whether the advisory committees should be continued.

Sincerely,

A handwritten signature in cursive script that reads "Barbara J. Kelley".

Barbara J. Kelley
Executive Director





COLORADO

Department of Regulatory Agencies

2014 Sunset Review: Colorado Pay Equity Commission Colorado Voter Access and Modernized Elections Commission

KEY RECOMMENDATIONS

Continue the Colorado Pay Equity Commission.

The Pay Equity Commission (PEC) was created to increase awareness of pay inequity and to develop mechanisms to address it. The PEC has made some, though minimal progress on its assigned tasks. As such, the work of the PEC remains unfinished and it should be continued.

Sunset the Colorado Voter Access and Modernized Elections Commission.

The General Assembly created the Colorado Voter Access and Modernized Elections Commission (Commission) to evaluate the implementation of the Voter Access and Modernized Elections Act (Act). The Act requires the Commission to issue four reports on specified timelines. In the absence of any additional duties assigned by the legislature, the Commission will have fulfilled its assigned tasks by February 16, 2015. Therefore, the General Assembly should allow the Commission to sunset.

MAJOR CONTACTS MADE DURING THESE REVIEWS

Colorado Association of Commerce and Industry
Colorado Department of Labor and Employment
Colorado Secretary of State
Colorado State University
Colorado Voter Access and Modernized Elections Commission members
National Federation of Independent Business—Colorado Chapter
Pay Equity Commission members

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:
Colorado Department of Regulatory Agencies
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Background

Introduction

As part of a sunset review, the advisory committee that is scheduled to terminate must submit to the Department of Regulatory Agencies (DORA), on or before July 1 of the year preceding the year of repeal:¹

- The names of current members of the advisory committee;
- All revenues and all expenditures, including advisory committee expenses, *per diem* paid to members, and any travel expenses;
- The dates all advisory committee meetings were held and the number of members attending the meetings;
- A listing of all advisory proposals made by the advisory committee, together with an indication as to whether each proposal was acted upon, implemented or enacted into statute; and
- The reasons why the advisory committee should be continued.

Importantly, sunset reviews of advisory committees do not, generally, analyze the underlying program to which the committee is expected to render advice or recommendations. If an advisory committee is sunset, the underlying program will continue.

Sunset Process

As with sunset reviews of programs, agency officials and other stakeholders can submit input regarding an advisory committee through a variety of means, including at www.dora.state.co.us/pls/real/OPR_Review_Comments.Main.

The Colorado Pay Equity Commission and the Colorado Voter Access and Modernized Elections Commission shall terminate on July 1, 2015, unless continued by the General Assembly. It is the duty of DORA to conduct an analysis and evaluation of these advisory committees pursuant to section 2-3-1203, Colorado Revised Statutes.

The purpose of this review is to determine whether these commissions should be continued in the interest of the public and to evaluate their performance. DORA's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

¹ §§ 2-3-1203(2)(b)(I) and (II), C.R.S.

Colorado Pay Equity Commission

Creation, Mission and Make-Up

The Colorado Pay Equity Commission (PEC), set forth in section 8-5-106, Colorado Revised Statutes (C.R.S.), was created in House Bill 10-1417 partially as a result of recommendations made by an identically named, *ad hoc* commission convened in 2007. Many of that original commission's recommendations can be found resonating throughout the PEC's statutory mandates.

The PEC is created in the office of the Executive Director of the Colorado Department of Labor and Employment (Executive Director and CDLE, respectively).

The work of the PEC includes:²

- Educating employers in the state about issues or practices that may contribute to pay inequities;
- Working with business groups and educational institutions to develop and maintain an inventory of best practices for encouraging equal pay;
- Encouraging employers to implement equal pay best practices;
- Studying other state models of equal pay practices that achieve pay equity;
- Developing a program recognizing employers who pursue pay equity practices;
- Conducting outreach and education to employees and employers regarding pay equity; and
- Working to establish the State of Colorado as a model employer with regard to pay equity.

² § 8-5-106(3), C.R.S.

The PEC comprises 11 members:³

- The Executive Director, or his or her designee;
- The Director of the Colorado Civil Rights Division, or his or her designee;
- One member representing higher education who has experience in pay equity issues, appointed by the Governor;
- One member representing a statewide labor union federation that includes private and public sector unions, appointed by the President of the Senate;
- One member representing a national organization that serves minority communities and communities of color, appointed by the President of the Senate;
- One member of a women's national association or organization, appointed by the Speaker of the House of Representatives;
- One member who is an attorney with experience in labor and employment issues, is an active member of a statewide association of attorneys, and represents employees, appointed by the Speaker of the House of Representatives;
- One member representing a business association, appointed by the minority leader of the Senate;
- One member representing a chamber of commerce or consortium of chambers of commerce, appointed by the minority leader of the House of Representatives;
- One member who is a private, for-profit employer with fewer than 15 employees, appointed jointly by the minority leaders of the Senate and the House of Representatives; and
- One member who is a private, for-profit employer with 15 or more employees, appointed jointly and with the unanimous consent of the President and minority leader of the Senate and the Speaker and the minority leader of the House of Representatives.

PEC members may serve no more than two consecutive, two-year terms.⁴

Responsibilities of the PEC

At any time, the PEC may submit to the Executive Director recommendations for policy or administrative changes, upon approval of at least two-thirds vote.⁵

³ § 8-5-106(1)(a), C.R.S.

⁴ § 8-5-106(1)(b)(I), C.R.S.

⁵ § 8-5-106(5), C.R.S.

By June 30, 2012, and by each June 30 through 2015, the PEC is required to submit an annual report to the Executive Director outlining the work of the PEC, including:⁶

- The education and outreach in which the PEC has engaged;
- The steps taken to encourage employers to implement equal pay practices;
- The status of the inventory of best practices and the recognition program, and whether any employers have been recognized under the program;
- Any finding the PEC has made based on its study of other states and practices in this state;
- Any recommendations the PEC submitted to the Executive Director since the previous annual report; and
- Any other relevant information.

The Executive Director must present the PEC's annual report to the Senate's Business, Labor and Technology Committee and the House of Representatives' Business Affairs and Labor Committee.⁷

Revenues and Expenditures

CDLE is authorized to receive gifts, grants and donations to fund the PEC's costs.⁸ However, there have been no revenues or expenditures associated with the PEC.

Meetings of the PEC

PEC members serve without compensation and may not be reimbursed for any expenses they incur.⁹

The PEC is required to meet quarterly, and its first meeting was to be held no later than September 1, 2010.¹⁰ The PEC met twice in 2010, six times in 2011, four times in 2012, seven times in 2013 and, as of this writing, twice in 2014.

Proposals and Their Status

The PEC has made no recommendations to the Executive Director pertaining to possible legislation.

⁶ § 8-5-106(4)(a), C.R.S.

⁷ § 8-5-106(4)(a), C.R.S.

⁸ § 8-5-106(2), C.R.S.

⁹ § 8-5-106(1)(e), C.R.S.

¹⁰ § 8-5-106(1)(d), C.R.S.

The General Assembly assigned the PEC six distinct tasks. Each is discussed below, along with the PEC's accomplishments pertaining thereto:

- Educating employers in the state about issues or practices that may contribute to pay inequities.
 - The PEC developed employer fact sheets in 2012. Some highlights include:
 - Flexible scheduling helps business attract and retain the best employees.
 - Replacing employees costs an average of 150 percent of annual salaries.
 - Firms with flexibility programs have proven higher stock value growth.
 - In 2013, the PEC partnered with a local television station to disseminate some of the PEC's materials through the station's "Women and Girls Lead" initiative's website.¹¹
 - In 2014, the PEC began working on a strategic marketing campaign entitled "Together, Colorado Works." The PEC envisions that businesses that meet the PEC-created criteria for participation will be able to leverage the campaign as an endorsement and validation of their efforts. Additionally, employees will be encouraged to look for the endorsement as a sign of a company's commitment to its team and to the community overall.
 - In the fall of 2014, the PEC is partnering with Colorado State University (CSU) to convene a meeting of large employers with the goal of developing a state-wide statement of principles that employers would be able to sign, indicating their commitment to work towards pay equity.

¹¹ See Rocky Mountain PBS. *Women and Girls Lead: Why Equal Pay Matters*. Retrieved on September 10, 2014, from www.rmpbs.org/topics/women-and-girls-lead/payequity/

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- Working with business groups and educational institutions to develop and maintain an inventory of best practices for encouraging equal pay.
 - The PEC developed this inventory in 2012.
 - Examples of best practices for employers include:
 - Create a pay system based on behavioral factors, not who is performing the work.
 - Conduct regular internal assessments of compensation across gender, racial and age groups, including looking out for any stereotyping and hidden bias.
 - Enact human resource policies that support participation in the workforce, such as equitable part-time work which supports a career track and advancement opportunities.
 - Examples of best practices for employees include:
 - Do your homework. Compare your skills and responsibilities to those of others in your workplace or industry. Research your employer, potential/other employers in your industry and the local economy.
 - In addition to wages, take into account the employer's entire compensation plan, including the value of benefits, bonuses, development opportunities, educational opportunities, retirement benefits, stock options and the quality of the working environment.
 - Get involved with co-workers and management to address inequities, such as, whenever possible, bring your questions and concerns to management.
 - Encouraging employers to implement equal pay best practices.
 - The PEC's work with respect to fact sheets, best practices, the strategic marketing campaign and the efforts at CSU can all be considered efforts to address this task.
 - Studying other state models of equal pay practices that achieve pay equity.
 - Preliminary research revealed that, to the extent they exist at all, these models typically involved legislative changes. Since the PEC decided that it would not pursue such changes in its first two years, this task was tabled.
 - Developing a program recognizing employers who pursue pay equity practices.
 - Rather than create its own awards program, the PEC has encouraged other organizations with existing employer recognition awards to incorporate pay equity into their award criteria.

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- Conducting outreach and education to employees and employers regarding pay equity.
 - PEC members have spoken at educational forums, business networking events, and other community meetings.
 - In addition to the fact sheets the PEC developed for employers in 2012, the PEC also developed fact sheets for employees. Some highlights include:
 - The Equal Pay Act prohibits sex discrimination in the payment of wages to men and women performing substantially equal work under similar working conditions in the same establishment.
 - The National Labor Relations Act gives non-management employees the legal right to meet with co-workers to discuss job conditions and combat unfair pay practices.
 - Colorado's Wage Transparency Act allows non-management employees to share wage information with each other, and prohibits employers from having policies that do not allow employees to talk about their pay.

 - Working to establish the State of Colorado as a model employer with regard to pay equity.
 - No formal work has been undertaken with regard to this task.

Finally, the PEC produced its first annual report in 2012. No report was submitted in 2013. As of this writing, the 2014 report had not yet been completed.

Reasons to Continue the PEC

Whether and the extent to which gender- and race-based pay inequity exist are issues beyond the scope of this sunset report. However, given that the General Assembly created the PEC to address these issues, the remainder of this report proceeds under the presumption that they do exist.

The question, then, becomes whether the PEC has satisfied its statutory mandates and whether any work remains for it to do that might justify its continued existence.

The General Assembly established a rather ambitious agenda for the PEC, assigning it the responsibilities of educating and reaching out to employers and employees, developing best practices, researching pay equity models utilized in other states, developing employer recognition programs and establishing the State of Colorado as a model employer.

Given that the PEC was provided no resources to conduct its work, its accomplishments are somewhat remarkable.

In just under five years, the PEC has developed a best practices inventory for employers and employees along with informational fact sheets. It recognizes its inability to develop its own employer recognition program, so it has encouraged those with existing programs to consider pay equity in their award criteria. It has teamed with a television station to disseminate PEC information on the internet, and it has developed a strategic marketing plan to further enhance its education and outreach efforts.

However, it has not completed the work the General Assembly assigned to it. Much remains to be done in terms of education and outreach, and, most notably, on making the State of Colorado a model employer.

Analysis and Recommendation

Several factors seemingly argue in favor of allowing the PEC to sunset. First, it has made some, though minimal progress on its assigned tasks. As noted above, it developed a best practices inventory and fact sheets for employers and employees in 2012, but until recently, those documents were largely unavailable to the public. It has developed a strategic marketing plan, but it remains unclear how its success will be measured.

Next, accumulation of PEC-related information for this sunset report proved exceptionally difficult. There is no central repository of PEC information or records.

Finally, since CDLE received no funding to provide administrative or other support to the PEC, its support has been minimal.

All of this could argue in favor of allowing the PEC to sunset. However, inadequate administrative support and poor recordkeeping are not, necessarily, grounds to repeal the PEC if the work of the PEC is deemed important. Additionally, the PEC's lack of progress on its assigned tasks can reasonably be tied to the lack of support.

Therefore, assuming, as this report does, that gender- and race-based pay inequity exist, then the work of the PEC remains unfinished and it should be continued.

Voter Access and Modernized Elections Commission

Creation, Mission and Make-Up

The General Assembly created the Colorado Voter Access and Modernized Elections Commission (Commission) when it passed House Bill 13-1303, set forth in section 1-1-115, Colorado Revised Statutes, also known as the Voter Access and Modernized Elections Act (Act). The Act seeks to increase participation in the electoral process by making voting and registering to vote more convenient and accessible. The Act makes significant changes to Colorado's electoral process, including reducing residency requirements and allowing people to register to vote through election day.

The Act charges the Commission with evaluating the implementation of the Act and issuing four reports on specified timelines.

The Commission is comprised of 11 members:¹²

- The Secretary of State (Secretary), or his or her designee.
- The head of the Office of Information Technology in the Governor's Office, or his or her designee.
- Two members of the Joint Technology Committee of the Senate and House of Representatives, as appointed by that committee, or those appointees' designees. These two members may not be affiliated with the same major political party.
- Two representatives of the Colorado County Clerks Association appointed by the association, one from a county with at least 25,000 active electors and one from a county with fewer than 25,000 active electors as of the date of appointment. These two members may not be affiliated with the same major political party.
- A member who represents the interests of people with disabilities, appointed by the Secretary.
- Two members with expertise on voting rights, appointed by the Governor.
- Two members, each representing a major political party, as appointed by the chairperson of each major political party.

Commission members serve two-year terms.¹³ They serve without compensation, but may be reimbursed for reasonable expenses.¹⁴ The Secretary and another Commission member, as elected by a majority of Commission members, serve as Commission co-chairs.¹⁵ The Secretary provides technical assistance and support to the Commission in meeting its statutory duties, to the extent possible within existing resources.¹⁶

¹² § 1-1-115(2), C.R.S.

¹³ § 1-1-115(3)(b)(I), C.R.S.

¹⁴ § 1-1-115(3)(b)(III), C.R.S.

¹⁵ § 1-1-115(4)(a), C.R.S.

¹⁶ § 1-1-115(3)(b)(IV), C.R.S.

Responsibilities of the Commission

The overarching responsibility of the Commission is to evaluate the implementation of the Act.¹⁷ As such, the Act charges the Commission with preparing the following reports and presenting them to the House of Representatives and Senate State, Veterans, and Military Affairs Committees:

- An independent needs assessment that assesses the current state of voting and registration system technology, including the statewide voter registration system and the online voter registration system. By law, the Commission had to complete this report on or before July 15, 2013.
- An independent needs assessment that evaluates the current state of technology, including voting systems, certification of voting systems, and replacement of voting systems. The Commission had to present this report, which was to include an analysis of election-related technological costs and funding sources, on or before September 2, 2013.
- Recommendations based on the two needs assessment reports described above. The report must also set forth a process by which the Commission would review the use of technology during the forthcoming 2014 general election. The Commission had to present this report on or before January 15, 2014.
- A report that evaluates the use of technology during the 2014 general election using the established review process, and also includes technical recommendations for the 2016 general election. The Commission must present this report on or before February 16, 2015.

Revenues and Expenditures

Since its creation, the Commission has incurred a total of \$52,252 in expenditures. These expenditures fall into three categories: lunch costs (\$1,282), meeting expense reimbursement (\$2,970), and payment for professional services (\$48,000). The meeting expenses are paid out of the Department of State cash fund. The Commission paid \$24,000 to two different consulting firms for their work in compiling the two independent needs assessments required by the Act. The Commission does not generate any revenues.

¹⁷ §1-1-115(5), C.R.S.

Meetings of the Commission

The Commission met a total of 27 times in fiscal year 13-14 and once in fiscal year 14-15. The Commission appointed two subgroups of subject matter experts to provide technical guidance. The Technology Subgroup, comprised of one Commission member, four county representatives, and two other experts familiar with current voting technology, met a total of three times in fiscal year 13-14. The Business Practices Subgroup, comprised of two Commission members and nine county representatives, focused on developing best practices for implementing the new voting technology. This subgroup met a total of 14 times in fiscal year 13-14.

Proposals and Their Status

The Act gives the Commission four clear and specific directives, three of which the Commission has completed:

- On July 15, 2013, the Commission issued its *Needs Assessment of the Current State of Voting and Registration System Technology*, which defined and prioritized the system upgrades and process changes necessary to support the Act's changes to the election system.
- On August 30, 2013, the Commission issued its *Assessment of Voting System Technology Report*, which provided a detailed analysis of existing voting system technology.
- On January 15, 2014, the Commission issued its *2014 Colorado Voter Access and Modernized Elections Commission Report*, which contained the Commission's recommendations following its previous two reports.

In response to the Commission's work, the Secretary has re-codified Colorado's election rules, completed enhancements to the statewide voter registration system (commonly referred to as SCORE), and developed a web-based voter service and polling center application.

The Commission's fourth and final statutory directive is to present a report that evaluates the use of technology during the November 2014 general election and makes technical recommendations for the 2016 general election. The Commission must complete this report on or before February 16, 2015.

Reasons to Sunset to the Commission

The Commission has fulfilled all of its statutory responsibilities except for the final report, which is due on or before February 16, 2015. The Commission has met all of its previous commitments within the required statutory timeframe and it is reasonable to conclude that the final report will be no exception. With the completion of the final report, the Commission will have met its statutory obligations.

Analysis and Recommendation

The General Assembly gave the Commission a narrow mandate with an aggressive timeline for its completion. As of this writing, the Commission has fulfilled its obligations in a timely manner. Once its final report is released, it will have met all of its prescribed duties. For this reason, in the absence of any additional duties assigned by the legislature, the General Assembly should allow the Commission to sunset on July 1, 2015.