



**CO L O R A D O**

**Department of  
Regulatory Agencies**

**2014 Sunset Review:  
Compliance Advisory Panel**

*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 the evaluation of the Compliance Advisory Panel. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2015 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), 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 and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the provisions provided under section 109.2 of Article 7 of Title 25, C.R.S. The report also discusses the effectiveness of the Colorado Department of Public Health and Environment and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

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 Compliance Advisory Panel

#### SUMMARY

##### *What Is the Compliance Advisory Panel?*

Mandated by the federal Clean Air Act, the Compliance Advisory Panel (CAP) exists to serve small businesses that are subject to air pollution regulations. The CAP advises Colorado's small business assistance program (SBAP) and ensures that SBAP communications are understandable to the layperson.

##### *How Is It Administered?*

The Colorado Department of Public Health and Environment (CDPHE) houses three separate but interdependent entities devoted to small business compliance assistance: the CAP, the SBAP, and the Small Business Ombudsman (SBO). The SBAP consists of two staff members and is housed within CDPHE's Air Pollution Control Division; the SBO is housed within the Division of Health and Environmental Services. Colorado's CAP advises both the SBAP and the SBO. The seven-member CAP meets about four times a year, and its members serve two-year terms.

##### *What Does It Cost?*

Although the SBAP and the SBO have a combined annual budget of roughly \$310,000, none of this is allocated to the CAP. CAP members do not receive per diems and are not reimbursed for meeting expenses.

## KEY RECOMMENDATIONS

### *Continue the Compliance Advisory Panel for 11 years, until 2026.*

Environmental regulations are complex. Large businesses have the resources to retain dedicated compliance departments that navigate state and federal regulations, prepare and submit reports, and ensure ongoing compliance. Small businesses, on the other hand, often lack such resources. The SBAP exists to provide such resources to small business. The CAP exists to ensure that the SBAP is effective in serving its customers. The CAP has no dedicated funding and requires very few state resources to administer, making it a cost-effective way to promote communication between CDPHE and small business. By helping to facilitate small businesses' compliance with air pollution regulations, the CAP is contributing to the public health, safety, and welfare. The CAP also assures that Colorado complies with the provisions of the federal Clean Air Act.

### *Extend Compliance Advisory Panel members' terms to three years.*

Currently, CAP members typically serve two, two-year terms, and the CAP meets about three to four times a year. This means that a CAP member might attend just 12 meetings before reaching the end of his or her service. Current and former CAP members state that because of the spectrum of industries the CAP serves and the complexity of air pollution regulations, it takes time to become oriented to the CAP. The frequent turnover leads to a lack of institutional knowledge on the CAP. Changing the length of members' terms from two years to three years would allow members to accrue institutional knowledge and lessen the time spent recruiting and appointing new members. Many advisory committees throughout state government have three-year terms for their members.

## MAJOR CONTACTS MADE DURING THIS REVIEW

Colorado Compliance Advisory Panel  
Colorado Department of Public Health and Environment, Air Pollution Control Division  
Colorado Department of Public Health and Environment, Division of Environmental Health and Sustainability

### 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  
Office of Policy, Research and Regulatory Reform  
1560 Broadway, Suite 1550, Denver, CO 80202  
[www.dora.state.co.us/opr](http://www.dora.state.co.us/opr)



# Table of Contents

Background .....	1
Introduction.....	1
Types of Regulation.....	2
Licensure .....	2
Certification.....	3
Registration .....	3
Title Protection.....	3
Regulation of Businesses .....	4
Sunset Process.....	4
Methodology .....	4
Compliance Advisory Panels.....	5
Legal Framework.....	6
History of Regulation .....	6
Summary of Statutes .....	6
Program Description and Administration.....	9
Meetings.....	9
Accomplishments.....	10
Analysis and Recommendations.....	11
Recommendation 1 - Continue the Compliance Advisory Panel for 11 years, until 2026. ....	11
Recommendation 2 - Clarify that the CAP is responsible for advising the SBAP and make the CAP subject to sunset under Title 2.....	11
Recommendation 3 - Extend CAP members' terms to three years. ....	12

---

# Background

## Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria<sup>1</sup> and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

---

<sup>1</sup> Criteria may be found at § 24-34-104, C.R.S.

- 
- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
  - Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

## Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

### Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

---

## Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

## Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

## Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

---

## Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

## **Sunset Process**

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: [www.dora.colorado.gov/opr](http://www.dora.colorado.gov/opr).

The functions of the Air Pollution Control Division of the Colorado Department of Public Health and Environment (Division and CDPHE, respectively) as enumerated in Section 109.2 of Article 7 of Title 25, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2015, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the administration of the Compliance Advisory Panel (CAP) pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the CAP should be continued for the protection of the public and to evaluate the performance of the Division. During this review, the Division must demonstrate that the CAP serves to protect the public health, safety or welfare. DORA's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

## **Methodology**

As part of this review, DORA staff attended CAP meetings, interviewed Division staff, reviewed CAP records and minutes, interviewed CAP members, reviewed Colorado statutes and Division rules, and reviewed the laws of other states.

---

## Compliance Advisory Panels

Congress passed the federal Clean Air Act (Act) in 1970 to protect the public from the harmful effects of air pollution. The Act directed the Environmental Protection Agency (EPA) to establish science-based national standards for air quality and required states to develop and adopt enforceable plans to meet those standards.<sup>2</sup>

Congress substantially revised the Act in 1990. Recognizing that small businesses were less likely than large ones to have the expertise and resources to interpret and comply with EPA regulations, Congress amended the Act to require states to establish a technical and environmental compliance assistance program to serve small business stationary sources, defined as businesses that emit air pollutants below statutorily defined thresholds and that have fewer than 100 employees.<sup>3</sup> Typical examples of small business stationary sources include auto repair shops, coffee roasters, and dry cleaners.

The revised Act directed each state to establish a compliance advisory panel as part of its mandated small business assistance program. The duties of the panel were to include evaluating the performance of the state's small business assistance program and ensuring that communications from the program are understandable to the layperson. The Act empowered compliance advisory panels to provide guidance and make recommendations; the panels do not set policy or take enforcement actions.

A survey of 41 jurisdictions—39 states, the U.S. Virgin Islands, and the District of Columbia—revealed that 16 jurisdictions, including Colorado, have active compliance advisory panels; 16 have inactive panels, meaning that states have appointed panel members but do not convene regular meetings; and 8 have not appointed a panel.

---

<sup>2</sup> United States Environmental Protection Agency. *Clean Air Act Requirements and History*. Retrieved on September 3, 2014, from <http://www.epa.gov/air/caa/requirements.html>

<sup>3</sup> 42 U.S.C. § 7661f(c).

---

## Legal Framework

### History of Regulation

Following the enactment of the federal Clean Air Act Amendments of 1990, the General Assembly created Colorado's Compliance Advisory Panel (CAP) in 1992 with the passage of Senate Bill 97 (SB 97). The bill housed the CAP within the Air Pollution Control Division at the Colorado Department of Health (now called the Department of Public Health and Environment, or CDPHE).

Generally, SB 97 hewed closely to the federal legislation, but it also established that CAP members serve for two-year terms and included a July 1, 1998 sunset date for the CAP. The bill directed that the 1997 sunset review be conducted pursuant to section 2-3-1203, Colorado Revised Statutes (C.R.S.), which provides for the sunset review of advisory committees.

In 1996, the General Assembly passed House Bill 1159, which repealed the standing joint sunrise/sunset committee and directed that future sunrise and sunset reviews be heard instead by committees of reference designated by the Speaker of the House of Representatives and the President of the Senate. This bill also contained language changing the type of sunset review the CAP would undergo in 1997: the bill directed that the review be conducted pursuant to section 24-34-104, C.R.S., which establishes the sunset review criteria for professional and occupational licensing programs, instead of section 2-3-1203, C.R.S., which pertains to advisory committees.

The 1997 sunset review recommended continuing the CAP and made no other recommendations. Accordingly, the General Assembly passed House Bill 98-1076, which continued the CAP until July 1, 2007. In 2004, the General Assembly moved the sunset date up to July 1, 2005.

Following the 2004 sunset review, the General Assembly passed Senate Bill 05-144, which continued the CAP until July 1, 2015.

Since its creation in 1992, the CAP has undergone no substantive changes.

### Summary of Statutes

The laws relating to the CAP are housed in Section 7661f of Title 42 of the United States Code (U.S.C.) and in section 25-7-109.2, C.R.S.

---

The federal Clean Air Act (Act) includes provisions requiring each state to establish a technical and environmental compliance assistance program to serve small business stationary sources, which the Act defines as stationary sources<sup>4</sup> that:<sup>5</sup>

- Are owned or operated by a person who employs 100 or fewer individuals;
- Are small business concerns, as defined in the Small Business Act;
- Are not major stationary sources;
- Do not emit 50 tons or more per year of any regulated pollutant; and
- Emit less than 75 tons per year of all regulated pollutants.

Federal law requires each state to appoint a small business ombudsman and create a compliance advisory panel as part of its small business assistance program.

Section 25-7-109.2, C.R.S, creates Colorado's Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBAP), the Small Business Ombudsman (SBO), and the CAP.

The seven-member CAP consists of:<sup>6</sup>

- Four members who own or represent owners of small business stationary sources. The following bodies each appoint one of the four members:
  - The Speaker of the House of Representatives;
  - The minority leader of the House of Representatives;
  - The President of the Senate; and
  - The minority leader of the Senate.
- Two members, who do not own or represent the owners of small business stationary sources, to represent the public. The Governor must appoint these members.
- One member selected by the executive director of CDPHE.

CAP members serve two-year terms.<sup>7</sup>

---

<sup>4</sup> "Stationary source" is a place or object from which pollutants are released and which does not move around. Source: United States Environmental Protection Agency. *Air Permits: Definitions of Selected Permitting Terms*. Retrieved on September 3, 2014, from <http://www.epa.gov/region9/air/permit/defn.html>

<sup>5</sup> 42 U.S.C. §7661f(c)(1).

<sup>6</sup> 42 U.S.C. §7661f(e)(2) and section 25-7-109.2(3), C.R.S.

<sup>7</sup> § 25-7-109.2(4), C.R.S.

---

The responsibilities of the CAP include:<sup>8</sup>

- Rendering advisory opinions concerning the effectiveness of the SBAP, difficulties encountered, and the degree and severity of enforcement;
- Making periodic reports to the EPA and to the Governor; and
- Reviewing information for small business stationary sources to assure laypeople can understand it.

The CAP is responsible for overseeing<sup>9</sup> the SBAP, which supports the CAP in developing and disseminating its reports and advisory opinions.<sup>10</sup>

---

<sup>8</sup> 42 U.S.C. §7661f(e)(1) and section 25-7-109.2(2)(b), C.R.S.

<sup>9</sup> Section 25-7-109.2(2)(d), C.R.S., states that the CAP must “oversee” the SBAP. However, the CAP has no supervisory or administrative authority over the SBAP.

<sup>10</sup> 42 U.S.C. §7661f(e)(1)(D).

## Program Description and Administration

Small business compliance assistance at the Colorado Department of Public Health and Environment (CDPHE) is comprised of three separate but interdependent entities: the Small Business Assistance Program (SBAP), the Small Business Ombudsman (SBO), and the Compliance Advisory Panel (CAP). The SBAP consists of two staff members and is housed within CDPHE's Air Pollution Control Division (Division). The SBO is housed within CDPHE's Division of Health and Environmental Services. Colorado's CAP advises both the SBAP and the SBO.

Although the SBAP and the SBO have a combined annual budget of roughly \$310,000, none of this is allocated to the CAP. CAP members do not receive per diems and are not reimbursed for meeting expenses.

Three Division employees devote a very small percentage of their time to the CAP.

### Meetings

The CAP meets about four times a year, typically at CDPHE's Denver headquarters, although the CAP occasionally meets off-site at places of business subject to air quality regulations to learn about their specific compliance concerns.

Table 1 shows, for the five calendar years indicated, the CAP's meeting dates and the number of members in attendance.

**Table 1**  
**Meetings of the Compliance Advisory Panel**

Calendar Year	Meeting Date	Number of CAP Members Attending
2009	January 21	6
	May 6	5
	August 19	7
	December 9	7
2010	March 17	6
	June 16	4
	September 15	4
	December 8	5
2011	April 13	6
	June 15	5
	September 21	7
	December 7	5
2012	March 14	4
	June 13	5
	September 12	5
2013	February 20	5
	June 5	6
	August 21	4
	November 20	5

---

Generally, the CAP has a high participation rate. Meetings typically consist of updates from SBAP staff on changes within the SBAP and the Division and discussion of ongoing projects.

## Accomplishments

The core responsibilities of the CAP include advising the Division on the effectiveness of the SBAP, including the degree of enforcement; reporting to the Environmental Protection Agency (EPA) and the Governor; ensuring that materials are understandable to the layperson; and overseeing the SBAP.

The CAP had numerous accomplishments from 2008 to 2013. Notable ones include:

- Providing continuing support for the Printer Environmental Results Program. This program helps businesses in the printing and imaging industry adopt sustainable business practices by assisting with follow-up inspections, workshops, and data-compilation.
- Helping to develop a self-certification program for dry cleaners using the chemical perchloroethylene (commonly referred to as perc). The self-certification program provides checklists and worksheets to help business owners comply with air regulations and to introduce possible alternatives to perc.
- Reviewing guidance documents addressing a wide range of topics and industries, including gasoline distribution, coffee roasting, composting facilities, engines and generators, incinerators, and landfills.
- Reviewing new rules addressing greenhouse gas emissions, lead-based paint renovation and repair, and boilers, and changes to existing rules governing the permitting process for small businesses.
- Investigating the need for guidance documents for the sand and gravel industry and helping to plan outreach workshops for this industry.
- Reviewing and commenting on the SBAP website and other websites offering grant and resource information for small businesses.
- Providing feedback to the EPA during the Hazardous Waste Program Evaluation Business Roundtable.
- Reviewing the new electronic survey for SBAP staff evaluations.
- Updating the EPA on regional compliance.
- Reviewing the Small Business Compliance Certification Workbook.

The CAP also attended numerous workshops and presentations regarding environmental regulations and issues affecting small business.

---

## Analysis and Recommendations

### **Recommendation 1 – Continue the Compliance Advisory Panel for 11 years, until 2026.**

The federal Clean Air Act Amendments of 1990 (Act) required states to establish a program to help small businesses comply with air quality regulations. As part of this mandated small business assistance program, states were required to appoint a small business ombudsman and form a compliance advisory panel to provide subject matter expertise. To meet these requirements, the General Assembly created Colorado's Small Business Assistance Program (SBAP), Small Business Ombudsman (SBO), and the Compliance Advisory Panel (CAP) in 1992. The Air Pollution Control Division within the Colorado Department of Public Health and Environment (CDPHE) houses the Small Business Assistance Program (SBAP); the Division of Environmental Health and Sustainability houses the SBO. In Colorado, the CAP advises both the SBAP and SBO.

Environmental regulations are complex. Large businesses have the resources to retain dedicated compliance departments that navigate state and federal regulations, prepare and submit reports, and ensure ongoing compliance. Small businesses, on the other hand, often lack such resources, and these tasks might fall to the business owner or an employee whose expertise does not lie in regulatory compliance. The SBAP exists to provide such resources to small business.

The CAP exists to ensure that the SBAP is effective in serving its customers. CAP members typically represent a range of industries and are able to identify areas where those diverse industries need state guidance. The CAP also ensures that SBAP's informational and training materials are geared toward laypeople. The CAP has no dedicated funding and requires very few state resources to administer, making it a cost-effective way to promote communication between CDPHE and small business.

By helping to facilitate small businesses' compliance with air pollution regulations, the CAP is contributing to the public health, safety, and welfare. The CAP also assures that Colorado complies with the provisions of the Act.

For these reasons, the General Assembly should continue the CAP for 11 years, until 2026.

### **Recommendation 2 - Clarify that the CAP is responsible for advising the SBAP and make the CAP subject to sunset under Title 2.**

The Department of Regulatory Agencies (DORA) conducts two types of sunset review. The first type is conducted under section 24-34-104, Colorado Revised Statutes (C.R.S.). The Title 24 sunset criteria target regulatory programs and allow for a comprehensive review of programs' licensing, enforcement, and rulemaking functions.

---

The second type of sunset review is conducted under section 2-3-1203, C.R.S. The Title 2 sunset guidelines focus on advisory committees and provide a means to assess the efficacy of such committees. Title 2 sunset reviews are limited in scope and are consequently considerably less complex than Title 24 reviews.

When the General Assembly created the CAP in 1992, it established that the CAP would be subject to a sunset review under Title 2 in 1997 and repeal in 1998.

In 1996, the General Assembly passed House Bill 1159, which repealed the standing joint sunrise/sunset committee and also directed that the 1997 sunset review of the CAP be conducted pursuant to Title 24. The reasoning for this change is unknown.

In its 1997 and 2004 sunset reviews, DORA recommended only that the CAP be continued. DORA did not recommend any substantive changes. Further, since the CAP was created, the General Assembly has not changed it in any substantive way.

Section 25-7-109.2, C.R.S., establishes the duties of the CAP: the CAP advises and assesses the effectiveness of the SBAP and makes periodic reports to the Governor and the Environmental Protection Agency. The CAP has no licensing, enforcement, or rulemaking authority, which means that the criteria under Title 24 have little relevance to the CAP. Although one of the CAP's duties is to "oversee" the SBAP, this word implies a formal level of authority over the operations of the SBAP that the CAP does not possess. Therefore, the word "oversee" should be replaced with "advise."

The CAP is an advisory committee, and the sunset criteria found in Title 2 would provide a logical, less cumbersome means of assessing its efficacy.

For these reasons, the General Assembly should establish that future sunset reviews be conducted pursuant to Title 2, which focuses on advisory committees, and clarify that the CAP is responsible for advising, rather than overseeing, the SBAP.

### **Recommendation 3 – Extend CAP members' terms to three years.**

When it created the CAP, the General Assembly established two-year terms for CAP members.

CAP members typically serve two, two-year terms, and the CAP meets about three to four times a year. This means that a CAP member might attend just 12 meetings before reaching the end of his or her service.

Current and former CAP members state that because of the spectrum of industries the CAP serves and the complexity of air pollution regulations, it takes time to become oriented to the CAP. Anecdotally, just as members have found their footing, it is time to step down. The frequent turnover also leads to a lack of institutional knowledge on the CAP.

---

Having to appoint new members so frequently also compels CDPHE to expend considerable effort recruiting new members and ushering them through the appointment process. The Act establishes very specific appointment criteria for the CAP members: the Governor, the minority and majority leaders of both the House and the Senate, and CDPHE's executive director must each appoint at least one member. The number of stakeholders involved in the appointment process can delay the confirmation of new CAP members. In fact, delays in the appointment process meant the CAP lacked a quorum for several months, and a meeting originally scheduled for March 2014 had to be postponed four times.

Changing the length of members' terms from two years to three years would allow members to accrue institutional knowledge and lessen the time spent recruiting and appointing new members. Many advisory committees throughout state government have three-year terms for their members.

For these reasons, the General Assembly should extend CAP members' terms from two years to three years.