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**Department of
Regulatory Agencies**

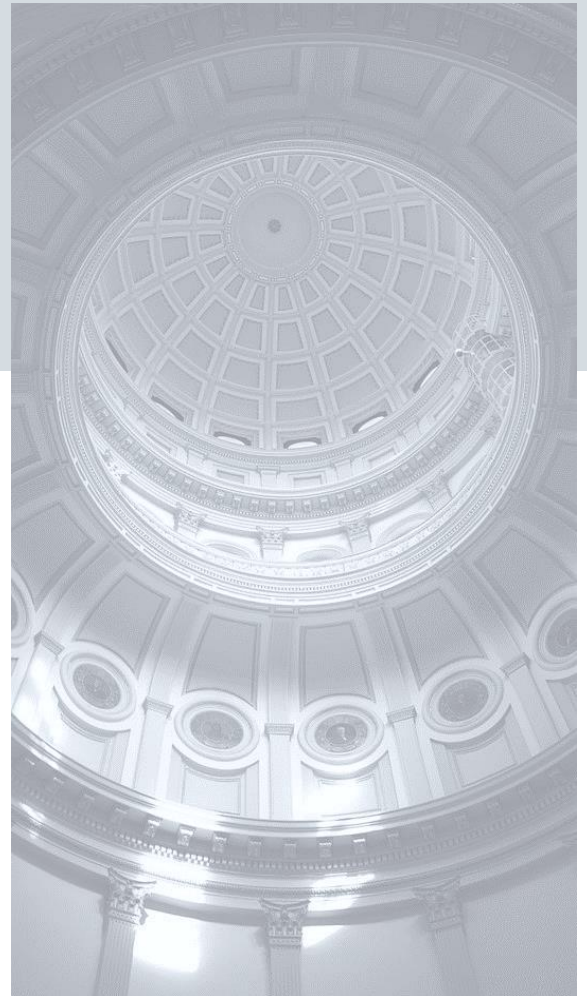
Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review

Colorado Kids Outdoors Advisory Council

Nurse-Physician Advisory Task Force
for Colorado Health Care

Sales and Use Tax Simplification
Task Force



October 15, 2019



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2019

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 General Assembly established a sunset review process for advisory committees and boards in 1986 as a way to analyze and evaluate their efficacy and to determine whether they should continue. Since their creation, Colorado's sunrise and sunset processes have gained national recognition and are routinely highlighted as best practices as governments seek to streamline regulation and increase efficiencies.

Section 2-3-1203(2)(b)(III), Colorado Revised Statutes, directs the Department of Regulatory Agencies to submit a report containing such analysis and evaluation to the Office of Legislative Legal Services no later than October 15 of the year preceding the date established for termination.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed its evaluations of the Colorado Kids Outdoors Advisory Council, the Nurse-Physician Advisory Task Force for Colorado Health Care, and the Sales and Use Tax Simplification Task Force. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2020 legislative committees of reference.

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,

Patty Salazar
Executive Director





COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Reviews:

Colorado Kids Outdoors Advisory Council
Nurse-Physician Advisory Task Force for Colorado Health Care
Sales and Use Tax Simplification Task Force

KEY RECOMMENDATIONS

Sunset the Colorado Kids Outdoors Advisory Council.

The Council, which is located in the Executive Director's Office at the Department of Natural Resources, was created to establish criteria for the Colorado Kids Outdoors Grant Program, to review grant applications and to consult on implementation of the grant program. However, the Council has not performed any of these duties because the grant program was only minimally funded.

Continue the Nurse-Physician Advisory Task Force for Colorado Health Care.

Although NPATCH, which is located in the Department of Regulatory Agencies' Division of Professions and Occupations, has completed its primary mission of developing the articulated plan model for advanced practice nurses with prescriptive authority, NPATCH represents the state's singular formal stage upon which physicians and nurses can, and indeed are required to address issues at the interface of medicine and nursing. These are issues that continue to evolve, demanding the continued attention of regulators and policy makers alike.

Continue the Sales and Use Tax Simplification Task Force.

The Task Force, which is located in the General Assembly, was created, in part, to study the necessary components of a simplified sales and use tax system. While the Task Force has made progress, simplification remains elusive and sweeping solutions are not readily apparent.

MAJOR CONTACTS MADE DURING THESE REVIEWS

Colorado Association of Commerce and Industry
Colorado Association of Mechanical and Plumbing Contractors
Colorado Automobile Dealers Association
Colorado Counties, Inc.
Colorado Department of Natural Resources
Colorado Department of Regulatory Agencies, Division of Professions and Occupations
Colorado Department of Revenue
Colorado Medical Society
Colorado Municipal League
Colorado Nurses Association
Legislative Council Staff
Members of the Nurse-Physician Advisory Task Force for Colorado Health Care
Members of the Sale and Use Tax Simplification Task Force
National Federation of Independent Business
Office of Legislative Legal Services

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
Colorado Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.colorado.gov/opr



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Background

Introduction

As part of the sunset review of an advisory committee, the advisory committee that is scheduled to repeal must submit to the Department of Regulatory Agencies, through the Colorado Office of Policy, Research and Regulatory Reform (COPRRR), on or before July 1 of the year preceding the year in which the advisory committee is scheduled to 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.colorado.gov/opr.

The Colorado Kids Outdoors Advisory Council and the Sales and Use Tax Simplification Task Force shall terminate on July 1, 2020, and the Nurse-Physician Advisory Task Force for Colorado Health Care shall terminate on September 1, 2020, unless continued by the General Assembly. It is the duty of COPRRR to conduct an analysis and evaluation of these advisory committees pursuant to section 2-3-1203, Colorado Revised Statutes.

The purpose of these reviews is to determine whether these committees should be continued for the protection of the public and to evaluate their performance. COPRRR's findings and recommendations are submitted via this report to the legislative committees of reference of the Colorado General Assembly.

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

Colorado Kids Outdoors Advisory Council

Creation, Mission and Make-Up

The Colorado Kids Outdoors Advisory Council (Council), was created along with the Colorado Kids Outdoors Grant Program (Grant Program) in 2010 via House Bill 10-1131 (HB 1131). The Grant Program was created to:

- (a) Help ensure greater coordination and cooperation among state agencies and private organizations in providing Colorado's youth high-quality experiences in Colorado's vast range of natural environments and a greater understanding of and appreciation for the complex ecosystems of the state; and
- (b) Improve statewide access to environmental education and raise awareness for the need for and benefits of outdoor experiences as part of the broad scope of public education provided by the state.²

The Grant Program, which is administered by the Executive Director of the Colorado Department of Natural Resources (DNR), was created to,

fund opportunities for Colorado youth to participate in outdoor activities in the state, including but not limited to programs that emphasize the environment and experiential, field-based learning.³

To assist in the implementation of the Grant Program, HB 1131 also created the Council, which comprises six individuals. Four of these serve in an *ex officio* capacity:⁴

- The Executive Director of DNR,
- The Commissioner of Education,
- The Executive Director of Great Outdoors Colorado, and
- The Director of the Division of Parks and Wildlife in DNR.

The remaining two members must possess expertise in outdoor recreation and environmental education. One is appointed by the Executive Director of DNR and the other is appointed by the Commissioner of Education, and both serve two-year terms. Neither is eligible for reimbursement for expenses.⁵

² House Bill 10-1131, Legislative Declaration § 2.

³ § 24-33-109.5(2), C.R.S.

⁴ § 24-33-109.5(4)(a)(I), C.R.S.

⁵ § 24-33-109.5(4)(a)(II) and -109.5(4)(b), C.R.S.

Responsibilities of the Council

The Council's statutory duties are to:⁶

- Review grant applications and make recommendations to the Executive Director of DNR for grant awards,
- Assist the Executive Director of DNR in establishing criteria for awarding grants, and
- Advise the Executive Director of DNR concerning implementation of the Grant Program.

Revenues and Expenditures

The Grant Program is funded through gifts, grants or donations. In addition, the Executive Director of DNR may use other youth educational funds for the Grant Program. The Grant Program is specifically prohibited from receiving money from the General Fund.⁷

Although DNR records regarding the Grant Program and the Council are sparse, some funds may have been donated when the Grant Program was initially created, and these funds may have been used to fund the *Colorado Environmental Education Plan* in 2012.

Regardless, no other funds could be identified as having been donated to the Grant Program, so there was no work for the Council to perform.

As a result, DNR staff could identify no revenues or expenditures specifically associated with the Council.

Meetings of the Council

DNR staff could locate no records to substantiate whether the Council ever convened, though it may have met very soon after its initial creation. Regardless, it did not meet in either fiscal year 17-18 or fiscal year 18-19, which is the time period subject to sunset review.

⁶ § 24-33-109.5(4)(c), C.R.S.

⁷ § 24-33-109.5(2), C.R.S.

Proposals and Their Status

Although no records could be located, there is speculation that the Council met soon after its initial creation and directed an unknown sum of money to the *Colorado Environmental Education Plan* in 2012. Regardless, there was no Council activity in either fiscal year 17-18 or fiscal year 18-19.

Reasons to Sunset the Council

The Council was created to perform three tasks:⁸

- Review grant applications and make recommendations to the Executive Director of DNR for grant awards,
- Assist the Executive Director of DNR in establishing criteria for awarding grants, and
- Advise the Executive Director of DNR concerning implementation of the Grant Program.

It appears that only minimal funds were donated to the Grant Program, though that could not be verified. As a result, the Council was unable to fulfill its statutory mission. It is, therefore, reasonable to conclude that the Council should sunset. It has not fulfilled its statutory mandate because it has been unable to do so.

Importantly, the underlying purposes of the Grant Program and the Council are not at issue here. Indeed, only the Council is subject to sunset, which means the Grant Program will continue.

Analysis and Recommendation

When conducting sunset reviews of this nature, it is typical to explore the reasons why the Council was created, whether it has fulfilled those statutory mandates and whether any work remains for it to perform in the future.

The Council was created to establish grant criteria, to review grant applications and to consult on the implementation of the Grant Program. The Council has not performed any of these duties because the Grant Program was only minimally funded.

Whether work remains to be conducted is less clear. While only minimal funds may have been donated to the Grant Program to date, they could be at some point in the future. Indeed, DNR and its partners continue to work to expose Colorado youth to the outdoors. Some examples of these efforts include the Schools Outdoor Learning

⁸ § 24-33-109.5(4)(c), C.R.S.

Environments (SOLE) Program, the Outdoor Wilderness Lab (OWL) Program and the Outdoor Understanding for Teachers (OUT) Program, to name a few.

However, should the General Assembly sunset the Council, the Grant Program will continue. Thus, should the Grant Program ever receive funding, the Executive Director of DNR could convene an *ad hoc* committee to fulfill the duties of the Council.

For all these reasons, the General Assembly should sunset the Council.

Nurse-Physician Advisory Task Force for Colorado Health Care

Creation, Mission and Make-Up

The Nurse-Physician Advisory Task Force for Colorado Health Care (NPATCH) was created in 2009, following a sunset review of the State Board of Nursing (Board of Nursing). Senate Bill 09-239 implemented a sunset recommendation to change the model under which certain advanced practice nurses (APNs) prescribe medication, such that an APN seeking prescriptive authority must enter into a mentorship with a physician or other qualified licensed health care provider. At the conclusion of the mentorship, the APN is required to develop an articulated plan for safe prescribing that documents how the APN intends to maintain ongoing collaboration with physicians and other health care professionals in connection with the APN's practice of prescribing medication.

In light of this new system, NPATCH was charged with:⁹

- Promoting patient safety and quality care;
- Addressing issues of mutual concern at the interface of the practices of nursing and medicine;
- Informing public policy-making; and
- Making consensus recommendations to the Board of Nursing and the Colorado Medical Board (Medical Board) on topics including the transition to the articulated plan model and harmonizing language for articulated plans, as well as to the Executive Director of the Department of Regulatory Agencies (DORA).

Twelve members comprise NPATCH, one each from the Board of Nursing and the Medical Board, appointed by the presidents of those two bodies, and 10 appointed by the Governor:¹⁰

- Three members recommended by and representing a statewide professional nursing organization,
- Three members recommended by and representing a statewide physicians' organization,
- One member representing the nursing community who may or may not be a member of a statewide professional nursing organization,
- One member representing the physician community who may or may not be a member of a statewide physicians' organization, and
- Two members representing consumers.

Members serve three-year terms without compensation.¹¹

⁹ § 24-34-109(1), C.R.S.

¹⁰ § 24-34-109(2)(a), C.R.S.

¹¹ § 24-34-109(2)(b), C.R.S.

Responsibilities of NPATCH

NPATCH is required to make recommendations regarding:¹²

- Facilitating a smooth transition to the articulated plan model;
- The framework for articulated plans, including the creation of sample plans;
- Quality assurance mechanisms for all medication prescribers;
- Evidence-based guidelines;
- Decision support tools;
- Safe prescribing metrics for all medication prescribers;
- Methods to foster effective communication between health professions;
- Health-care delivery system integration and related improvements;
- Physician standards, process and metrics to ensure appropriate consultation, collaboration and referral regarding APN prescriptive authority; and
- Prescribing issues regarding providers other than physicians and APNs.

NPATCH recommendations require the consensus of its members, which is defined as “an agreement, decision, or recommendation that all members of [NPATCH] can actively support and that no member actively opposes.”¹³

Revenues and Expenditures

NPATCH is staffed by DORA’s Division of Professions and Occupations (DPO), and is funded 50 percent by the Medical Board and 50 percent by the Board of Nursing, which, in effect, means that the licensees of those two boards fund NPATCH. Total NPATCH-related expenditures amounted to \$25,687 in fiscal year 17-18, and \$15,554 in fiscal year 18-19. These expenditures can be broken down into three general categories: board expenditures, operating and personal services.

Items such as mileage and parking reimbursement, as well as any food or refreshments provided at NPATCH meetings are considered to be board expenses. These amounted to \$2,870 in fiscal year 17-18, and \$3,448 in fiscal year 18-19.

Items such as office supplies are covered by operating expenses, which totaled \$150 in each of the two fiscal years 17-18 and 18-19.

DPO has dedicated between 0.1 and 0.3 full-time equivalent (FTE) employees to staff NPATCH. The Program Director (Program Management II) provides administrative support to NPATCH, schedules and organizes NPATCH meetings, collaborates with NPATCH on identifying issues to address and makes arrangements for guest presentations at NPATCH meetings. Expenditures related to this position are

¹² § 24-34-109(5), C.R.S.

¹³ § 24-34-109(3)(b), C.R.S.

characterized as personal services, and totaled \$22,667 (0.3 FTE) in fiscal year 17-18 and \$11,956 (0.1 FTE) in fiscal year 18-19.

Meetings of NPATCH

NPATCH met five times in fiscal year 17-18 and six times in fiscal year 18-19, typically every other month. On average, nine members attend each meeting. All meetings are held at DPO's offices in downtown Denver.

Proposals and Their Status

Since its creation in 2009, NPATCH has fulfilled its specific statutory mandates regarding the transition to articulated plans and gone on to make additional recommendations on six separate occasions:

- In September 2010, NPATCH recommended that the Executive Director of DORA recommend to the Governor that Colorado “opt-out” of the Medicare/Medicaid reimbursement requirement for physician supervision of certified registered nurse anesthetists (CRNAs) at rural and critical access hospitals.
 - The Governor adopted this recommendation.
- In November 2014, NPATCH issued its *Final Report and Recommendations on the Requirements for Advanced Practice Registered Nurses Seeking Prescriptive Authority*, which contained five distinct recommendations.
 - Some of these recommendations were incorporated into Senate Bill 15-197, which generally reduced the barriers for APNs to obtain prescriptive authority.
- In April 2015, NPATCH recommended that the Board of Nursing amend its rules and work in conjunction with the State Board of Pharmacy (Pharmacy Board) to allow APNs with prescriptive authority to engage in drug therapy management with pharmacists in the same manner as physicians engage in the same activity under Pharmacy Rule 6.00.00.
 - The Board of Nursing subsequently amended its rules in accordance with this recommendation.
- In June 2016, NPATCH recommended that the Board of Nursing update its *Articulated Plan Toolkit* to include an introduction and to reorganize portions of the *Toolkit* to be more user friendly.
 - The Board of Nursing subsequently amended its rules in accordance with these recommendations.

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- In October 2016, NPATCH issued its *Final Report and Recommendations on the Articulated Plan in Practice*, which made two recommendations: 1) require only new APN graduates with provisional prescriptive authority, as opposed to all APNs with prescriptive authority, to have articulated plans; and 2) reduce the regulatory burden by minimizing the frequency and scope of audits of articulated plans, by providing sample articulated plans to serve as models and by increasing education and outreach regarding articulated plans.
 - The first of these recommendations requires legislative action and has not, as of this writing, been implemented. The second of these recommendations was adopted by the Board of Nursing. Specifically, the Board of Nursing now audits articulated plans only if a complaint is filed, a sample articulated plan can be found on the Board of Nursing's website and DPO sent emails directing APNs to that website in order to inform them of the process.

 - In June 2018, NPATCH issued its *Final Report and Recommendations on Peer Health Assistance Services*, which included six recommendations: 1) statements of work in the contracts between the Medical Board's and the Board of Nursing's peer health assistance contractors should identify the topics on which the contractors provide education and outreach; 2) the statutory provisions authorizing the Medical Board and the Board of Nursing to enter into confidential agreements with licensees with physical or mental disabilities should be consistent; 3) the Medical Board and Board of Nursing should limit specificity of physical and mental conditions in public disciplinary documents; 4) the Nurse Practice Act should be amended to allow for discipline for substance abuse that does not involve the diversion of controlled substances; 5) peer health assistance contractors should prioritize timely evaluations and reports; and 6) the safe havens provided by the Medical Board for those who access peer health assistance and who are unknown to the Medical Board should be clearly defined and transparent.
 - As of this writing, none of these recommendations had been adopted, though some were considered as part of the 2019 sunset review of the Nurse Practice Act.

Additionally, in 2013, NPATCH convened the Quad Regulators Conference, consisting of board members from the Medical Board, the Board of Nursing, the Colorado Dental Board and the Pharmacy Board. Attendees discussed policies that could assist with the state's efforts to reduce prescription drug abuse. As a result of this conference, a single *Quad Regulator Joint Policy for Prescribing and Dispensing Opioids* was developed for use by professionals regulated by all four boards. This policy ultimately evolved into the *Guidelines for the Safe Prescribing and Dispensing of Opioids*, which was last updated in March 2019.

Finally, NPATCH occasionally explores topics upon which it is unable to reach consensus, and is thus unable to put forward formal recommendations. For example, in spring 2019, NPATCH explored whether the state's decision to opt out of the

Medicare/Medicaid reimbursement requirement that CRNAs be supervised by a physician at rural and critical access hospitals (first adopted in 2010) should be expanded to include all areas of the state. Ultimate consensus could not be achieved so no formal recommendation was made, but considerable time and energy were devoted to these discussions. These efforts were memorialized in a report and made available to the public.

Reasons to Continue NPATCH

NPATCH was created first and foremost to assist in the state's transition from collaborative agreements to articulated plans for APNs with prescriptive authority. This was, perhaps, the one specific task assigned to it, and it has been completed.

Additionally, NPATCH was given some more amorphous tasks, such as promoting patient safety and quality care, addressing issues of mutual concern at the interface of the practices of nursing and medicine and making recommendations regarding prescribing issues relating to providers other than physicians and APNs. Arguably, these are tasks that may never truly be completed, but that require continued discussion and engagement.

NPATCH is uniquely situated to address these types of issues. Indeed, NPATCH is a unique body within DPO, for it serves no regulatory purpose. Unlike the Medical Board or the Board of Nursing, NPATCH has no licensees to oversee, no rules to promulgate and no statute to enforce. Rather, NPATCH represents a bridge between the medical and nursing professions where issues of health care, not regulatory enforcement, can be discussed and thoroughly explored.

Although its primary mission has been fulfilled, much work remains to be done as the state's health-care delivery systems continue to evolve and as the roles of physicians, nurses and others evolve along with them.

Analysis and Recommendation

Although revisions may occasionally be necessary, NPATCH has completed its primary mission of developing the articulated plan model for APNs with prescriptive authority. The same cannot, necessarily, be said of NPATCH's more amorphous and aspirational tasks. Patient care and safety will always offer opportunities for improvement. As the state's health-care delivery systems continue to evolve, new issues will arise at the interface of medicine and nursing. As the nation's focus on opioids intensifies, so too may the need to address wide-ranging prescribing practices of various health-care practitioners.

Thus, it is reasonable to conclude that the expertise that NPATCH represents will continue to aid the state in addressing a multitude of health-care issues.

However, several aspects of NPATCH have been viewed as restricting its ability to act more effectively. For example, half of NPATCH's members represent professional associations, rather than health-care professionals.

Additionally, the requirement that NPATCH act on a consensus basis has hindered its ability to offer recommendations. This was most recently evidenced by NPATCH's discussions surrounding expansion of the opt out from the Medicare/Medicaid reimbursement requirement that CRNAs be supervised by a physician in certain settings. Because a single member of NPATCH disagreed with the expansion, NPATCH was unable to move forward with a recommendation.

Further, some view NPATCH as being hindered because its membership is restricted to the fields of medicine and nursing. Given the rapid pace of change in health care, and increasing collaboration among various health-care providers, it is reasonable to question whether other health-care professionals should be included in NPATCH's membership.

Finally, there have been times when NPATCH itself seems to struggle to identify in a routine manner new issues to address. Since NPATCH is required to offer recommendations to the Medical Board, the Board of Nursing and the Executive Director of DORA, some argue that these bodies should present issues for NPATCH to explore. However, the fact that NPATCH has the flexibility to determine on its own what issues to explore is indicative of its ability to adapt to a changing health-care environment.

These are all issues that go beyond the scope of this sunset review, but they are important issues that deserve to be brought to the attention of policy makers.

In the end, NPATCH is not perfect and there are opportunities for reform. Regardless, NPATCH represents the state's singular formal stage upon which physicians and nurses can, and indeed are required to address issues at the interface of medicine and nursing. These are issues that continue to evolve, demanding the continued attention of regulators and policy makers alike.

For all these reasons, the General Assembly should continue NPATCH.

Sales and Use Tax Simplification Task Force

Creation, Mission and Make-Up

In creating the Sales and Use Tax Simplification Task Force (Task Force) in 2017, the General Assembly found that, among other things:¹⁴

- Colorado has a unique and complex state and local sales tax system;
- Home rule jurisdictions have exercised their constitutional authority to establish their own sales and use tax systems, including their own licensing requirements, rates, taxable and nontaxable items and definitions; and
- The resulting lack of uniformity can be especially cumbersome for businesses operating in multiple jurisdictions.

Thus, the Task Force was created “to study the necessary components of a simplified sales and use tax system.”¹⁵

The Task Force comprises 15 members:¹⁶

- Two members of the Colorado House of Representatives, one appointed by the Speaker of the House of Representatives and one appointed by the minority leader of that chamber;
- Two members of the Colorado Senate, one appointed by the President of the Senate and one appointed by the minority leader of that chamber;
- A representative of the Colorado Department of Revenue (DOR) who is well versed in sales and use tax collection and distribution issues and who is knowledgeable of the policy statements and resolutions regarding sales and use tax collection and uniformity of the Multistate Tax Commission;
- A representative of the Colorado Municipal League (CML);
- A representative of Colorado Counties, Inc. (CCI);
- One manager, mayor, council-person, finance officer or tax administrator of a home rule or statutory city or city and county, appointed by CML from each of its four population membership categories;¹⁷ and
- Four members appointed by the Governor:
 - A member of a statewide association of small businesses that is addressing the simplification of sales and use tax collection;
 - A member of a statewide chamber of commerce;
 - A state and local sales tax law practitioner who is not employed by a home rule or statutory city or city and county; and

¹⁴ § 39-26-801, C.R.S.

¹⁵ § 39-26-802(1)(a), C.R.S.

¹⁶ § 39-26-802(2), C.R.S.

¹⁷ CML’s four population categories are “Small”, which are municipalities with populations under 8,000, “Medium”, which are municipalities with populations of between 8,000 and 80,000, “Large” which are municipalities with populations of between 80,000 and 250,000 and “Largest”, which are municipalities with populations over 250,000.

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- An accountant with state and local sales tax experience who is not employed by a home rule or statutory city or city and county.

Legislative members of the Task Force are entitled to compensation and reimbursement of expenses.¹⁸

Responsibilities of the Task Force

The Task Force is charged with studying

sales and use tax simplification between the state and local governments, including home rule municipalities, to identify opportunities and challenges within existing fiscal frameworks to adopt innovative revenue-neutral solutions that do not require constitutional amendments or voter approval.¹⁹

In conducting this study, the Task Force must consider the feasibility of:²⁰

- Having a third party entity responsible for state or local sales and use tax administration, return processing and audits;
- Making audits of retailers more uniform for all state and local taxing jurisdictions in the state;
- Utilizing certified software for sales and use tax administration and collection of state and local sales and use tax; and
- Utilizing a single sales and use tax return for state and local taxing jurisdictions.

The Task Force is required to submit a report, which may or may not contain recommendations for legislation, to the Legislative Council on or before November 1 each year.²¹

The staff of the Legislative Council and the Office of Legislative Legal Services (OLLS) are required to assist the Task Force in carrying out its duties.²²

¹⁸ § 39-26-802(4)(a), C.R.S.

¹⁹ § 39-26-802(1)(b), C.R.S.

²⁰ § 39-26-802(1)(b), C.R.S.

²¹ § 39-26-802(5), C.R.S.

²² § 39-26-802(4)(b), C.R.S.

Revenues and Expenditures

The Task Force is authorized to seek, accept and expend gifts, grants or donations,²³ though no such funds have been raised. Additionally, the four legislative members receive per diem and reimbursement for their travel expenses. In fiscal year 17-18, these totaled \$1,965. In fiscal year 18-19, these totaled \$1,863.

Meetings of the Task Force

The Task Force is required to meet as necessary during any legislative session or any interim between sessions,²⁴ but must meet at least eight times and all meetings must be open to the public and allow for public testimony.²⁵

The Task Force met four times during the 2017 interim during which it received briefings and presentations by OLLS, DOR, CML, CCI, the Special District Association, the Colorado Tax Auditors Coalition, the Office of the State Auditor, the Council on State Taxation, the Tax Foundation, Streamlined Sales Tax Governing Board, the Statewide Internet Portal Authority, members of the business community, software providers, and members of the public, among others. These presentations addressed a variety of subjects, including the current Colorado sales and use tax system; other states' efforts to simplify their systems; pending federal legislation; work being done by software providers and updates on CML's standardized definitions project.²⁶

The Task Force met four times during the 2018 interim during which it received briefings and presentations by OLLS, Legislative Council staff, DOR, CML, the Council on Taxation, the Streamlined Sales Tax Governing Board, the National Conference of State Legislatures, the Center for State Fiscal Reform and members of the public, among others. These presentations addressed a variety of subjects, including the current Colorado sales and use tax system (with an emphasis on use tax); other states' efforts to simplify their systems; CML's standardized definitions project; a request for information for an electronic sales tax system issued pursuant to House Bill 18-1022 and implementation of online sales tax collections following the U.S. Supreme Court's decision in *South Dakota, v. Wayfair, Inc.*²⁷

²³ § 39-26-803, C.R.S.

²⁴ § 39-26-802(1)(a), C.R.S.

²⁵ § 39-26-802(3), C.R.S.

²⁶ *Sales and Use Tax Simplification Task Force: Report to the Colorado General Assembly*, Colorado Legislative Council Research Publication No. 688 (November 2017), p. 3.

²⁷ *Sales and Use Tax Simplification Task Force: 2018 Report to the Colorado General Assembly*, Colorado Legislative Council Research Publication No. 703 (November 2018), p. 2. *South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080 (2018).

Proposals and Their Status

Pursuant to Joint Rule 24A(2.7)(B), only legislative members of an interim committee, such as the Task Force, may vote to approve draft bills.

In 2017, the Task Force recommended that a bill be introduced to require DOR to issue a request for information regarding the potential to contract for an electronic sales and use tax simplification system that could be used by state and local governments and that would provide:²⁸

- Accurate address location information,
- A single application process for sales tax licenses,
- A uniform sales tax remittance form,
- A single point of remittance for sales and use tax, and
- A taxability or exemption matrix.

This recommendation was reflected in House Bill 18-1022 (HB 1022), which was passed by the General Assembly and signed into law by the Governor.

In 2018, the Task Force recommended that a bill be introduced to require DOR to procure an electronic sales and use tax simplification system with the intent that at least three home rule jurisdictions opt-in to the system once active and that within three years after the bill is adopted, all home rule jurisdictions would use the system.²⁹

This recommendation was reflected in Senate Bill 19-006 (SB 006), which was passed by the General Assembly and signed into law by the Governor.

Reasons to Continue the Task Force

The Task Force is charged with studying

sales and use tax simplification between the state and local governments, including home rule municipalities, to identify opportunities and challenges within existing fiscal frameworks to adopt innovative revenue-neutral solutions that do not require constitutional amendments or voter approval.³⁰

²⁸ *Sales and Use Tax Simplification Task Force: Report to the Colorado General Assembly*, Colorado Legislative Council Research Publication No. 688 (November 2017), p. 11.

²⁹ *Sales and Use Tax Simplification Task Force: 2018 Report to the Colorado General Assembly*, Colorado Legislative Council Research Publication No. 703 (November 2018), p. 11.

³⁰ § 39-26-802(1)(b), C.R.S.

In conducting this study, the Task Force must consider the feasibility of several factors,³¹ all of which have been addressed at some point in the Task Force's history:

- Having a third party entity responsible for state or local sales and use tax administration, return processing and audits;
 - This was discussed at the July 2019 Task Force meeting.
- Making audits of retailers more uniform for all state and local taxing jurisdictions in the state;
 - This was discussed at the August 2015 Task Force meeting.
- Utilization of certified software for sales and use tax administration and collection of state and local sales and use tax; and
 - This was discussed at multiple Task Force meetings and those discussions led to the creation of HB 1022 and SB 006.
- Utilization of a single sales and use tax return for state and local taxing jurisdictions.
 - This was discussed at multiple Task Force meetings and those discussions led to the creation of HB 1022 and SB 006.

Arguably, the Task Force has at least discussed, if not completed, the specific tasks originally assigned to it. Additionally, the Task Force's work has led to the introduction and passage of two pieces of legislation: HB 1022 and SB 006.

However, most agree that the Task Force's larger goal remains elusive: simplification of Colorado's sales and use tax system. While the software application developed pursuant to SB 006 may go a long way in simplifying various aspects of the state's sales and use tax system, it has not yet been implemented. Indeed, as of this writing, no vendor has yet been identified to develop the system. Thus, it remains to be seen whether and to what extent it succeeds.

Analysis and Recommendation

Colorado has a long history of local control, and this is no more clearly evidenced than by the state's patchwork of hundreds of overlapping taxing districts. These districts include not just state, county and municipal taxing districts, but special districts as well. DOR collects the taxes and audits the taxpayers for many of these local governments and special districts, but many also perform these activities themselves.

These overlapping taxing districts become particularly burdensome when one considers that a business that sells and ships a product to a remote, Colorado-based customer, must collect and remit the appropriate sales or use tax for the location at which that purchaser is located. This requires the seller to appropriately identify the proper taxing jurisdictions, obtain a sales tax license for those jurisdictions, file the

³¹ § 39-26-802(1)(b), C.R.S.

proper sales tax returns and remit the appropriate amount of tax for each of those jurisdictions.

While the concerns of business are certainly understandable, so too are the concerns of the various taxing jurisdictions. Home rule municipalities are protective of their status as such. Many jurisdictions understandably desire to collect their own tax and to conduct their own taxpayer audits.

As a result of these seemingly conflicting interests, simplification remains elusive and sweeping solutions are not readily apparent. However, the Task Force has made progress, primarily through the passage of SB 006. There may be a role for the Task Force to play as the software application spawned by SB 006 evolves through its various anticipated iterations. Its successful implementation may represent significant, though not complete, simplification of some aspects of the state's sales and use tax system.

Some argue that the goal of the Task Force is ultimately unattainable given the statutory restrictions that its work be confined to existing fiscal frameworks and that its proposed solutions be revenue neutral and that they not require constitutional amendments or voter approval.

Such issues are beyond the scope of a sunset review such as this, but they merit mention here as legitimate concerns.

Although the Task Force has at least discussed, if not resolved, the several specific tasks originally assigned to it, it has made progress. More, perhaps, it has provided a formal arena in which the various interested parties can convene to discuss their difficulties and begin the conversations that may lead to ultimate simplification.

Just as there is debate over the substantive issue of whether to continue or sunset the Task Force, so too is there debate over whether the Task Force needs to be a legislative committee. Some argue that a voluntary body could be convened with the same stakeholder representation, but outside of the state's governmental framework. Others maintain that by having legislators on the Task Force, the legislature's attention remains focused on sales and use tax simplification and those legislators serving on the Task Force gain the expertise necessary to introduce and pass legislation. Perhaps HB 1022 and SB 006 exemplify this reasoning.

Regardless, most agree that the task of tax simplification remains undone. Some possible areas of continued focus include developing a single sales tax license, continued work on developing a set of standard definitions, continued work on destination sourcing and continued work on use tax in general. While some of these may require local solutions, the continued involvement of the state may help to ensure that meaningful solutions are found. In the end, work remains to be done.

This is a relatively unique sunset review in at least two respects. First, it is a review of a legislative committee. While COPRRR has conducted sunset reviews of the Colorado Youth Advisory Committee in the past, which is housed in the legislative branch, the Task Force more closely resembles an actual legislative committee in that it meets in the State Capitol Building and only legislative members vote on potential legislation.

Finally, the Task Force can fairly be characterized as an interim committee. Interim committees generally only meet for a single interim, yet the Task Force has met during the course of three.

Although sunset reviews conducted under section 2-3-1203, C.R.S., typically recommend either the continuation of or sunseting of the committee under review, the unique aspects of the Task Force represent justification for a slight departure. The General Assembly could consider continuing the Task Force for three years.

For these reasons, the General Assembly should continue the Task Force.