Colorado Legislative Drafting Manual

prepared by The Office of Legislative Legal Services

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Introductory Note

This Legislative Drafting Manual is designed primarily for legislative drafters in the Colorado General Assembly's Office of Legislative Legal Services. The first edition of the Drafting Manual was prepared in 1977 by the Legislative Drafting Office. Subsequent editions have occurred over the years and updates have been issued through replacement pages. Effective October 2009, the Drafting Manual will be updated electronically.

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Preface

> Poorly drafted statutes are a burden upon the entire state. Judges struggle to interpret and apply them, attorneys find it difficult to base any sure advice upon them, the citizen with an earnest desire to conform is confused. Often, lack of artful draftsmanship results in failure of the statute to achieve its desired result. At times, totally unforeseen results

> follow. On other occasions, defects lead directly to litigation. Failure to comply with certain constitutional requisites may produce total invalidity.[1]

Interpretation of statutes is fraught with possibilities for interpretations not necessarily intended by the sponsor. Professor George Gopen of Duke University, who teaches about writing in the legislative environment, reminds us of two fundamental truths about writing laws. First, he notes that "any unit of discourse is subject to infinite interpretation." By this he means that, however many reasonable interpretations there might be for legal language, there always seems to be at least one more. Second, he says that releasing a written product is inherently dangerous. When a written product is released, it becomes the sole property of the readers. Particularly in the case of laws, the readers are not so much interested in the true intent of the writer as they are how the law affects them. The result is that those who write laws should not be surprised that the readers of law tend to read law as the readers deem necessary to serve their own purposes.

In Colorado, the Office of Legislative Legal Services, under authority of the law establishing the Office (part 5 of article 3 of title 2, C.R.S.), furnishes bill drafting services to members of the General Assembly and the Governor. A request for bill drafting services from any state department or agency or from any other public or private agency or individual may not be accepted by the Office of Legislative Legal Services unless such a request is submitted through a member of the General Assembly.

The policy of the Office of Legislative Legal Services is to serve all members of the General Assembly equally, without regard to party affiliation, political view, seniority, or any other characteristic. Highest priority is given to maintaining a nonpartisan staff committed to honoring the confidentiality of the subject matter of each member's drafting requests.

This Legislative Drafting Manual is primarily designed to provide training material for beginning drafters in the Office of Legislative Legal Services. However, its purpose is also to provide a reference source to all drafters as to the requirements of the Senate, House, and Joint rules, the statutes, the state constitution, and case law, as well as to give suggestions on the mechanics, techniques, and styles of legislative drafting, with special emphasis on practices and procedures used by the Colorado General Assembly. This manual is intended to promote uniformity and standardization in the form, style, and language of legislation.

In the preparation of this manual, we have drawn from manuals of other states and from textbooks on legislative drafting, and we gratefully acknowledge the assistance we have received from these sources.

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[1] This paragraph is quoted from Legislative Bill Drafting, by Albert R. Menard, Jr., 26 Rocky Mt. L. Rev. 368 (1954).

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Chapter 1: Introduction to Drafting

1.1 Requests for Drafting Services

Requests for bill drafting services may be made to the Office of Legislative Legal Services by any member of the General Assembly at any time, whether or not the General Assembly is in session, or by the Governor or the Governor's representative. See section 2-3-505, C.R.S. Drafting services may take the form of bills, resolutions, memorials, amendments, or conference committee reports. Although the material in this section speaks in terms of bills, it also applies to the drafting of resolutions and memorials.

1.1.1 Duty of Confidentiality

The nature and subject matter of all bill requests are confidential. Section 2-3-505, C.R.S., provides that, prior to the introduction of a bill, no employee of the Office of Legislative Legal Services shall disclose to any person outside the Office the contents or nature of the bill, except with the consent of the person making the request. This requirement should be kept in mind and honored at all times during the bill drafting process.

However, as an exception to the confidentiality rule, section 2-3-505, C.R.S., permits "the disclosure to the staff of any legislative service agency of such information concerning bills prior to introduction as is necessary to expedite the preparation of fiscal notes, as provided by the rules of the general assembly." Joint Rule No. 22 of the Senate and House of Representatives states in part that, "The Office of Legislative Legal Services shall furnish preliminary copies of each bill and concurrent resolution to the Legislative Council staff in order that it may commence its review of the fiscal impact of such measures in accordance with this rule, but the Legislative Council staff shall not reveal the contents or nature of such measures to any other person without the consent of the sponsor of the measure."

An attorney-client relationship may exist between the lawyers in the Office and the General Assembly as an organization or institution. See Rule 1.13 of the Colorado Rules of Professional Conduct. Thus, in addition to the statutory duty of confidentiality provided for bill drafting, the lawyers in the Office may owe a general duty of confidentiality to the General Assembly with respect to all information that relates to their representation of the General Assembly. See Rule 1.6 of the Colorado Rules of Professional Conduct.[1]

[1] For more information on the attorney-client relationship in the legislative context, see Douglas Brown and Dan Cartin, *The Attorney-Client Relationship and Legislative Lawyers: The State Legislature as Organizational Client*, Journal of the American Society of Legislative Clerks and Secretaries, volume 2, no. 1, Spring 1996.

1.1.2 Bill Requests

Typically, legislators submit their own bill requests, but an authorized staff member or another person may, with permission from that legislator, submit a bill request on a legislator's behalf. Any staff member of the Office may accept a bill request. The requestor must at least provide the name of the prime sponsor and a subject for the bill request. Ideally, a general description of the bill being requested and any approved contact persons will also be included. The staff member of the Office accepting the request should try to get as much information as possible about the content of the draft. A bill request form, on the OLLSNet “Bill Drafting” page under “Forms & Bill Requests”, may help collect information about the request.

If a prepared draft of the proposed legislation accompanies the request, the drafter should ask for permission to contact the person who prepared the draft in case any questions arise.

The staff member who receives the bill request delivers the information to the front office staff, who will assign the request an "LLS number" and enter the request information into the Colorado Legislative Information and Communications System (CLICS). The front office staff will enter the sponsor and description of the bill provided by the requestor, as well as a category, any sub-categories, and a subject of the bill, as follows:

- The sponsor's name is entered, along with any other verified sponsors.[2] If the request is a committee bill it will be entered under the committee name. If the request is from Leadership and sponsorship is to be determined later, the words “No Name” will appear.
- The general subject matter of each request is designated by category as determined by the office from its list of categories. In most cases, the category corresponds closely to the C.R.S. titles and subjects. A list of the Office’s “Bill Categories” used for assigning bill requests is available on the OLLSNet “Bill Drafting” page under “Forms & Bill Requests”.
- The specific subject of the request is phrased as "Personnel system - maximum salary", rather than "Amend personnel laws to increase maximum salary".
- The details about what the measure will **do** are entered in the area of the form headed "Drafting Instructions".

After the request is entered into CLICS, the bill request is assigned to a team and sent to the team leader for assignment to a staff attorney or legislative editor.

[2] Other members who would like to sponsor the measure must notify the Office of their intent to be sponsors. An exception to this rule is made for interim bills, for which the sponsors agree during a public committee meeting to be listed on the bill. OLLS staff should attend the committee meetings where bills are being approved in order to get this information.

1.1.3 Duplicate Bill Requests

Duplicate bill requests occur every session, and the Office must handle each such scenario with diplomacy, tact, and confidentiality. The Office must help preserve the legislators' resources, for example, a legislator's five bills and the body's time, while protecting the confidentiality of bill requests.

Members become frustrated when the Office doesn't identify duplicate bills. Front office staff, team leaders, and drafters should be on the alert to identify possible duplicate bills as we go through the bill drafting season. Prior to the introduction of bills, staff members may identify duplicate requests informally and by checking the information in the CLICS system. Once bills begin to be introduced, the staff should also look at the subject index to identify duplicates. Drafters should remain aware that during the drafting process, a bill request may take an entirely different form than what the member originally described and thereby become a duplicate of another request long after either request was received.

Sometimes it is difficult to determine whether two bill requests are truly duplicates. Staff members should consult with the drafters of the affected bill requests to determine whether the requests are identical, nearly identical, partial duplicates, or merely similar. When in doubt, staff should err on the side of caution by identifying a potential duplicate situation to the members who requested the bills.

If a staff member determines that two bill requests are identical, nearly identical, or partial duplicates, the drafter should follow the process outlined below. Because of the delicate nature of the interests involved, it is important that the Office treat all sponsors fairly and similarly and follow the process consistently.

- First, determine whether the requests are identical, nearly identical, partial duplicates, or merely similar.
- If the bills are identical, nearly identical, or partial duplicates, contact each member with the information that the Office believes the member’s request may be a duplicate of another bill request filed with the Office. In this conversation, the drafter may disclose whether the other request is from a member of the Senate or the House of Representatives and whether the sponsor is a member of the same party. The drafter **may not** disclose the name of either member to the other. If one of the requested bills is already introduced, the drafter can tell the member who requested the unintroduced bill about the introduced bill and ask whether the member wants to continue pursuing the bill request.
- At this point, each member has some options. One option is that one or both members may decide to withdraw their requests. The Office policy is that if a legislator withdraws or kills a bill request prior to the bill introduction deadlines as a result of having filed a

duplicate bill request, the legislator may submit another bill request, even if the deadline for submitting an early or regular bill request has passed. The new request must be filed as soon as possible—normally within 48 hours. If the duplicate is not identified until just before the introduction deadline, the member may need to acquire delayed-bill permission from legislative leadership so the drafter has sufficient time to draft the replacement bill.

- The drafter should ask each member who requested the duplicate bill for permission to disclose the member's identity to the other member who requested the bill. At this time, the drafter should clarify that the Office is seeking the same permission from the other member, and the other member might not give permission for disclosure. If neither member gives permission to contact the other, and both members indicate that they wish to continue with their bill requests, the drafter should continue to work on both requests without divulging any more information to either member about the other member's request.

- If either member directs the drafter to disclose the member's identity to the other member, the drafter should do so. Once such a disclosure is made, the drafter should leave it up to the members to determine how to resolve the duplicate bill situation. The drafter's goal is to let the two members decide what they want to do without becoming an intermediary.

- In resolving a duplicate bill situation, members may want to join efforts as prime sponsors in each house, or they may want to become joint prime sponsors in the same house, or one may become a prime sponsor and the other a sponsor, or one of them may kill a request. In some cases, both members will proceed with their bills and let the issue work itself out through the process.

These steps may need to be modified in the case of a partial duplicate bill request. A partial duplicate occurs when one requested bill contains a duplicate portion of another requested bill. In this case, the drafter must not disclose the other contents of a bill that is only a partial duplicate. The bill sponsors may need to work out whether the provision will appear in only one of their bills or in both bills.

If a bill drafter encounters circumstances that are not covered by these steps, e.g., a situation involving three or more apparent duplicate requests, the drafter should consult the team leader or a senior staff member in the Office.

1.2 Preliminary Drafting Considerations

1.2.1 Purpose and Scope of Legislation

Before beginning to draft a bill, the drafter must determine exactly what the sponsor wants to accomplish. The drafter's function is to devise appropriate statutory language in proper form to carry out the sponsor's objectives. The drafter does not supply the policy of any bill or question the political strategy or the need for requested legislation.

The precise objective of the sponsor cannot be achieved if the drafter has only a vague impression of what the sponsor seeks to accomplish. At the first opportunity to discuss the bill with the sponsor, the drafter should attempt to obtain specific instructions concerning the purpose of the bill. Initially, the drafter should ask questions necessary to determine the issue that the legislator wishes to resolve. To that end, the drafter may, as a matter of routine, ask the following questions:

- What is the issue in need of resolution?
- What are some examples of the issue?
- What is to be changed or accomplished by this legislation?

The answers to these questions will clarify areas of constitutional and statutory research the drafter should pursue before drafting. If a proposed bill appears to be unconstitutional or to have a more pervasive effect on the statutes than the sponsor anticipated, the drafter must notify the sponsor.

Additional background information that is important to discuss with the sponsor at the outset includes the following:

- Is a narrow title, to prevent substantial amendments, or a broad title, to allow amendments, preferable?
- When will the bill become effective? To whom or to what is the bill to apply?
- Is an appropriation necessary to implement the bill? If so, from what source? Which department/office/agency should receive the funding?
- If the legislation creates a new program, what agency should administer the program? Are any changes needed in the administrative organization act? Does the administering agency need rule-making authority? How will the new program be funded? Does the new program or activity generate fees to be applied to its administration?
- Does the bill create or change the classification of a criminal offense?

- Do any other states have similar legislation?
- Is there a model or uniform act on the subject?
- Have bills been introduced on the subject in prior legislative sessions?

Frequently, the sponsor does not give explicit instructions, nor can the drafter anticipate every policy question that will arise in the course of drafting the bill. As the drafting of the legislation proceeds, additional questions may arise and subsequent conferences with the sponsor may be necessary.

The drafter should always request the name of any person the drafter may contact in case questions arise during the drafting process. The sponsor may prefer that an aide, lobbyist, constituent, state agency, or other entity be contacted to field such questions. In light of the confidentiality of all requests, only authorized parties may be contacted regarding the bill draft.

1.2.2 Constitutional Factors

Ideally, neither the intent nor the effect of the bill will violate federal or state constitutional limitations. Keeping these limitations in mind during the bill drafting process may prevent future constitutional challenges and confusion concerning the validity of statutes.

1.2.2.1 United States Constitution

The tenth amendment to the U.S. Constitution contains a reservation of power to the states, which provides that all powers not delegated to the federal government or prohibited to the states are reserved to the states. Other provisions of the U.S. Constitution effectively limit this grant of power to state legislatures.

Article VI, clause 2 of the U.S. Constitution contains a provision known as the supremacy clause, which is stated as follows:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

This provision is perhaps the most important limitation on the power of state legislatures.

State legislative power is further limited by Article I, Section 8 of the U.S. Constitution, which reserves certain subject areas to regulation by Congress. Such areas include the regulation of interstate commerce, bankruptcy, and immigration. Article I, Section 4 of the U.S. Constitution limits state control of elections for U.S. senators and representatives by requiring that state

legislation be subject to regulations that are passed by Congress. Article I, Section 10 of the U.S. Constitution imposes express limitations on state sovereignty by prohibiting activities ranging from entering treaties to passing laws that would have the effect of a bill of attainder, an ex post facto law, or a law impairing the obligation of contracts.

Article IV, Section 1 of the U.S. Constitution requires that each state give full faith and credit to the laws and judicial proceedings of other states. Article IV, Section 2 of the U.S. Constitution further requires that the citizens of each state have all privileges and immunities of citizens of other states.

Not only do certain articles of the U.S. Constitution limit state legislative power, a number of amendments also impose fundamental restrictions. For example, a state legislature may not prohibit religious freedom; establish religion; restrict freedom of speech or of the press; or deprive persons of equal protection of the law or of the right to life, liberty, or property without due process.

1.2.2.2 Colorado Constitution

Article V of the Colorado Constitution provides for the structure and function of the legislative department of the state government. The following provisions are of special importance to drafters:

Section 17. No law passed but by bill - amendments.

Section 18. Enacting clause.

Section 19. When laws take effect - introduction of bills.

Section 21. Bill to contain but one subject - expressed in title.

Section 24. Revival, amendment or extension of laws.

Section 25. Special legislation prohibited.

Section 31. Revenue bills must originate in House of Representatives.

Section 32. Appropriation bills.

Section 33. Disbursement of public money.

Section 34. Appropriations to private institutions forbidden.

Many of these provisions are discussed throughout this manual. Other provisions of the Colorado Constitution and the Enabling Act limit or affect legislative power in many areas, including property taxation, public indebtedness, taking property for public use, sale of public lands, public funding of certain health care services, funding of public education, and limitations on taxation

and spending. This list is far from exhaustive; and, given the scope of the state constitution, a drafter should research the subject of each bill so that the drafter is familiar with the state constitutional foundation.

1.2.3 Federal Preemption

Federal laws establishing standards for state welfare, health, education, highways, and other programs may serve as limits or place requirements on state policy and legislation in those areas. For example, in prior sessions, bills concerning highways, billboards, water pollution, air pollution, and unemployment compensation were based on federal legislation in order to assure that federal funds would be available to the state. After checking federal laws and determining how any federal requirements will affect a proposed bill, the drafter and bill sponsor should discuss the relationship between federal law and the intended purpose of the bill.

1.2.4 Approval or Rejection of Prior Colorado Case Law

There is a line of cases in Colorado where the courts have applied a presumption that the General Assembly is aware of judicial precedent in a particular area when it enacts or rewrites legislation in that area. The Colorado Supreme Court has held that "the General Assembly is presumed to be cognizant of prior decisional law when enacting or amending statutes".[3] In applying that presumption, the court in *Rauschenberger v. Radetsky* held that "When a statute is amended, the judicial construction previously placed upon the statute is deemed approved by the General Assembly to the extent that the provision remains unchanged." As a result, if there is a case construing the statute that is not specifically rejected in subsequent legislation, the General Assembly may inadvertently ratify or be viewed as ratifying or approving some previous statutory interpretation made by the courts.

Practically speaking, drafters may not have time to research the case law every time they draft a bill that amends a statute. However, when drafting a bill that significantly revises or recodifies a statute, the drafter should at least conduct a cursory examination of the annotations to see if there are cases construing the particular statute to be amended. Alternatively, the drafter may question the contact persons as to whether they are aware of any significant decisions construing the statute that need to be considered in revising the law. If the drafter identifies any cases that may present an issue concerning interpretation of the statute, the drafter should talk to the sponsor about the possibility of a presumption that the General Assembly is aware of judicial precedent being applied in a way that might be contrary to the intent of the bill.

[3] *Semendinger v. Britain*, 770 P.2d 1270 (Colo. 1989); *see Rauschenberger v. Radetsky*, 745 P.2d 640 (Colo. 1987).

1.2.5 Colorado Revised Statutes - Statutory Construction

The statutory sections that have the greatest effect on bill drafting are found in title 2 of the Colorado Revised Statutes. Title 2 sets forth certain rules of statutory construction and provides standard definitions for terms commonly used in legislation. The most pertinent statutes are discussed in more detail throughout this manual. Each drafter should have an in-depth working knowledge of title 2, C.R.S.

1.2.6 Rules of the General Assembly

Rules of the General Assembly cover many procedural aspects of the bill drafting process, including the route a bill follows from introduction to adoption by the General Assembly. Drafters should become familiar with the legislative rules published by the Colorado Legislative Council. The legislative rules are also available on the General Assembly's website, at: House and Senate Rules.

Joint Rule No. 21 of the Senate and the House of Representatives provides the standard rules for drafting legislation that amends existing law. Drafters should also be familiar with the deadline schedule for the request, delivery, and introduction of bills as found in Joint Rule No. 23. No request for a bill subject to the deadline schedule will be accepted, and no work will be done on such a bill, after the deadline for requests has passed, unless the Office has received the necessary permission from the Committee on Delayed Bills of the house in which the bill is to be introduced. Concurrent resolutions, joint resolutions, resolutions, and memorials are exempt from the deadline schedule; however, the General Assembly's rules may impose some limits on the introduction of resolutions and memorials.

Joint Rule No. 24 imposes a limitation on the number of bills that a legislator may introduce. Appropriation bills, resolutions, and certain committee bills are excluded from the bill limitations.

1.3 Sources for Research

The Office maintains a number of resources for research, including past statutes and session laws, reference books, and access to electronic databases. Further, Office staff has access to the Joint Legislative Library at the Capitol and, under section 2-3-506, C.R.S., Office staff may use the Supreme Court Library for their work. General sources for research are described in this section.

1.3.1 Colorado Revised Statutes

A bill may be patterned on an existing Colorado statute, even if the existing statute is not on the same subject. For example, a bill creating a board to license a particular profession or occupation

typically should be based on the standard provisions of the licensing laws set forth in title 12, C.R.S.

Existing statutory language is often understood by the implementing state agency. To the degree that existing statutory language has been implemented consistent with the policy intentions of members and stakeholders, it is better to model new provisions on existing statutory language. The fundamental essence of language is communication, and using consistent language when a consistent meaning is intended helps effective communication. Beware, however, of the assumption that a different state agency or a court will read existing language the same. The context is different; the background assumptions and needs of a different agency or a different area of law will affect its interpretation. And be careful about using language that has been court tested. If language has been "tested" that usually means that the language has landed people in court and the court has construed the language. Often a court has to construe language because it is ambiguous, so "tested" language is often problematic. Furthermore, the judge read that language in light of specific facts and in context of another statutory goal or other surrounding statutes. If the same language is put in a different context, the judge may interpret it differently. If permitted by the sponsor, the drafter should check with the appropriate state agency regarding the "workability" of the existing law before using it as a basis for new legislation.

If statutory research requires going back to a codification of the Colorado Revised Statutes prior to 1973, the comparative table found in Volume 18, Colorado Revised Statutes (1973), can be used to trace citations to their C.R.S. 1963 counterparts.

The following table shows a chronological list of publications of Colorado Statutes and the correct citation for each publication:

Revised Statutes of Colorado	(1868)	R.S. p. ___, § ___.
General Laws of Colorado	(1877)	G.L. § ___.
General Statutes of Colorado	(1883)	G.S. § ___.
Revised Statutes of Colorado	(1908)	R.S. 08, § ___.
Compiled Laws of Colorado	(1921)	C.L. § ___.
Colorado Statutes Annotated	(1935)	CSA, C. ___, § ___.
Colorado Revised Statutes 1953	(1953)	CRS 53, § ___.
Colorado Revised Statutes 1963	(1963)	C.R.S. 1963, § ___.
Colorado Revised Statutes*	(1973)	C.R.S., § ___.

*The 1973 publication was originally titled "Colorado Revised Statutes 1973", but is now titled "Colorado Revised Statutes".

1.3.2 Session Laws of Colorado

After every session of a General Assembly, both regular and extraordinary, a "Session Laws of Colorado (year)" is published containing all laws of both a permanent and temporary nature enacted at that session, proposed constitutional amendments and laws referred by that particular session to the people, and those constitutional amendments and initiated laws adopted at the general election held prior to the printing of a particular volume of Session Laws. Session Laws also contain most joint resolutions and certain other resolutions and memorials. These can help in drafting similar resolutions and memorials for a current session.

Session Laws are cited as follows: "Session Laws of Colorado 1987" or "Session Laws of Colorado 1986, Second Extraordinary Session". Session Laws 2016 to present are available on the General Assembly's website. The University of Colorado's law library maintains an electronic archive of session laws 1861 and going past 2016 online.

1.3.3 Red Book

The "Red Book" is a pamphlet with a red cover prepared by the Office of Legislative Legal Services after every regular session. The Red Book contains a list of all C.R.S. sections that have been repealed, amended, recreated, or added by laws enacted at the preceding regular session and at any extraordinary session held since the publication of the last Red Book. The Red Book also contains the tentative C.R.S. section number or numbers assigned to such new laws. The Red Book indicates the bill number; section of the bill in which the C.R.S. section was repealed, amended, recreated, or added; the effective date of the section; and the chapter of the session laws where the bill may be found. For example, through the use of the 1994 Red Book, a person can determine which sections of C.R.S. were amended during the 1994 session, which sections were repealed, and which sections were added. The same information can be found in tables included in the annual volumes of Session Laws. Electronic versions of past Red Books are available on the Office's Red Book Archive webpage.

1.3.4 Bills from Prior Sessions

A bill may be based on a similar bill prepared for a prior session. The Office maintains various subject indices and other finding aids that will facilitate research into bills drafted for prior sessions. In addition, a senior staff member may recall whether a similar measure was previously drafted.

If a bill is modeled on one prepared for a previous session, the drafter should check the member's bill request card in CLICS for additional information. The drafter should also check the journals of the particular session or the bill history information in CLICS to ascertain whether the bill, even if not passed, was amended either by committee or on the floor. Before including any such amendments in the bill, the drafter should verify that they come within the current sponsor's purpose.

The drafter should *never use a bill prepared for an earlier session without making it current by pulling up the latest version using the Alt-M macro and checking it thoroughly for citations, dates, and so forth*. Usually some improvement in the style and even the substance of the former draft can be made. Do not assume that a bill is satisfactory in all respects simply because it was introduced at a prior session.

1.3.5 Bills of Current Session

A member may request a bill identical or similar to a bill already introduced in the current session. The member may intentionally request such a bill for a number of reasons, including introducing the same bill in the other chamber or to replace a bill that has been postponed indefinitely or otherwise lost. A drafter who receives a request for a bill that is identical or similar to a bill already introduced should discuss with the sponsor whether the sponsor wants to use the prior bill's language or make changes before introducing the new bill.

If a member makes a request for a bill that is similar to a different request for a bill that has not been introduced, or has been introduced and is still pending, it may be a duplicate request. In that case, the drafter should consult the duplicate bill request policy described in section 1.1.3 of this chapter.

1.3.6 Laws and Bills of Other States

The drafter may ask the bill's sponsor if similar legislation has been adopted by other states or check the codes of other states that may have enacted laws addressing the same issue. When using a statute of another state, the drafter must change the form and terminology to conform to Colorado style and rules.

1.3.7 Uniform and Model Acts

In a few instances, the kind of bill desired has been prepared by the Uniform law commission, also known as the National Conference of Commissioners on Uniform State Laws, or a sponsor may specifically request a "uniform" bill. The commission prepares uniform acts on a variety of subjects that are intended, for the most part, to be followed exactly. For information about drafting uniform laws, see Chapter 12 of this manual titled "Guidelines for Drafting Uniform Acts".

Numerous organizations prepare model acts on a variety of subjects. "Model acts" differ from "uniform acts" in that they can be used as guides for legislation in which uniformity is not required. If a member requests a bill based on a model act, the drafter should prepare a draft of the model in the proper form and Office style. A benefit of using model legislation is that the act typically has been reviewed by others who may have identified potential problems and included solutions in the model legislation, but a drafter should identify Colorado-specific issues in the act that may not be addressed by a nationwide organization, and raise any potential issues with the sponsor.

1.4 Preparing to Draft

1.4.1 Analyzing the Kind of Bill Required

After doing the necessary background research, the drafter is ready to begin making decisions about the bill itself. A bill can do one or more of the following things:

- Create new law;
- Amend existing law;
- Repeal existing law.

1.4.1.1 Creating New Law

If existing law cannot be amended or repealed to accomplish what is desired, the bill will create new law. New sub-subparagraphs, subparagraphs, paragraphs, subsections, sections, parts, and articles may be added so as to fit into the C.R.S., however, new titles are rarely created.

Exceptions to the rule that new material must fit into the C.R.S. are allowed for appropriation bills and other bills whose applicability is strictly limited in time. An example of a bill having temporary applicability was H.B. 72-1133, which enacted special procedures for the 1972 general election. These procedures were necessitated by legislative reapportionment and would not be in effect for subsequent elections. The act appears in the 1972 Session Laws but was never published in the C.R.S.; accordingly, it was not necessary to designate C.R.S. section numbers in the bill.

1.4.1.2 Amending or Repealing Existing Law

If existing statutes deal with the subject covered by the request and a change in existing language, the addition of new language, or the repeal of existing language will accomplish the objective of the sponsor, the bill will likely amend or repeal that existing law. If the bill amends existing law, the drafter should harmonize the language and form with that used in the current

law in order to avoid creating inconsistencies and conflicts with unamended portions of related law, but harmonization does not mean that the drafter should use ambiguous or outdated language or the wrong authority verbs.

Conforming amendments: If a bill repeals any statutory subdivision, the drafter must remember to amend any C.R.S. sections that contain references to the repealed subdivision to remove those references. Sections that refer to a subdivision to be repealed may be determined by searching the statutes for references to the section that contains the repealed subdivision. However, this search will not necessarily identify sections that include references to the **subject** of the repealed subdivision. The drafter will have to find those references through a word search of the statutes. For example, if section 22-53-201, which creates the commission on school finance, is being repealed, the drafter will need to search the statutes for references to 22-53-201 and to search the statutes for the phrase "commission on school finance".

How to search for conforming amendments:

1. Keep the search broad

   If repealing section 9-9-909 (4), search for “9-9-909”. In the search results, read the language around the reference to see if it applies to the repealed language.
   Searches that are too specific may not reveal all references. If a reference reads "9-9-909 (3) and (4)" or "9-9-909 (3) to (5)", the reference to 9-9-904 (4) would not appear.

2. Search within the section itself

   If repealing 9-9-904 (4), search for (4) within section 9-9-904.

3. Run a search even if you are not repealing the entire provision since another area of the statutes may be affected by the change.

   In the search results, read the language around the reference to see if it applies to the repealed language.

4. Search for references to the topic of the substantially amended provision.

5. Run a search if you are renumbering, which includes repealing and reenacting a provision.

6. When repealing a part or article, search for each individual section and all the ways a part or article is cited including short titles and the topic of the repealed part or article:

   If repealing part 9 of article 1 of title 6, search:

   6-1-9* (using the asterisk will bring up every section in part 9)

   part 9 of article 1 of title 6

part 9 of article 1 of this title (search only within title 6)

part 9 of this article (search only within article 1 of title 6)

this part 9 (search only within part 9 of article 1 of title 6)

“Colorado No-call List Act”

“No-call list”

7. Search for terms or names that are changing or being repealed. Search for various ways terms are used when searching. Use asterisks to make the search easier.

   If changing “subscribers” on the Colorado no-call list, searching "subscriber*" will help find subscriber, subscribers, and other variations without having to run each search individually.

8. If you need to search bills going through the process for conforming amendments, see the Publications Team to learn how

9. Make a list of what has been searched.

   Use the Conforming Amendment Check section of the OLLS Bill Draft Workflow Sheet in the CLICS document for the bill to list what has been searched. Both drafters and editors should perform conforming amendment searches.

1.4.2 Outlining the Provisions of the Bill

A carefully prepared outline based on a sound analysis of the provisions that will be required in the bill is a good preliminary step before beginning actual drafting. Most often, a bill is structured so that the C.R.S. sections that form the core of the bill appear in numerical order. When a bill consists primarily of a new article, part, or sections added in a single place with the remainder composed of miscellaneous conforming amendments to existing statutory sections, the new material should be placed first, followed by the amendments.

1.4.2.1 Suggested Bill Outline Structure

The usual arrangement of the provisions of a bill is as follows:

1. Title;
2. Bill summary;
3. Enacting clause;
4. New material, if it constitutes the major portion of the bill;

5. Specific amendments to existing law;
6. Specific repeals;
7. Appropriation;
8. Applicability;
9. Effective date, though the effective date and applicability section may be combined;
10. Safety clause or effective date clause.

1.4.2.2 Suggested Article or Part Outline Structure

When a new article or part is added creating a new agency or establishing a new program, the following arrangement of provisions within the article is suggested:

1. Short title;
2. Legislative declaration;
3. Definitions;
4. Sections containing substance of the article, which cover:
    a. Main purpose;
    b. Administration;
        i. Administrative authority, i.e., powers and duties;
        ii. Administrative procedure;
    c. Enforcement;
    d. Penalties.

A drafter should ensure the logical arrangement of an article's or part's provisions, but because the provisions of bills vary so much in character, there are no definite rules for organizing an article or part. The drafter should examine existing statutes for the arrangement of laws similar to the bill being drafted. It may be helpful to break a new article into several parts or sections to assist in organizing a lengthy bill.

1.4.3 Preparing Bills from Drafts Originating Outside the Office of Legislative Legal Services

Frequently the Office receives a bill request that is accompanied by a prepared draft. In such cases, the drafter's function is to check the draft for accuracy, clarity, and consistency with other laws; make necessary changes and corrections; and check the draft as to form. A drafter should avoid changes having no purpose other than to substitute one's own preference in expression because editorial changes in language to suit a drafter's preference may result in unintended but serious substantive changes; however, unless the sponsor indicates otherwise, a drafter is encouraged to make changes to amend the language to conform to current drafting practices as specified in chapter 5 of this manual, entitled Special Rules and Techniques of Drafting and Grammar and Style, such as updating internal references to the current format, clarifying ambiguous language, changing gendered language to gender neutral, etc. Revisions may be made whenever they demonstrably improve the clarity of the draft. If given permission by the bill sponsor, a drafter may contact the person who prepared the draft to ensure that any suggested changes are consistent with the intent of the draft.

When instructed to review a draft for form only, that fact should be indicated on the bill request form. See section 5.1.6.8 of this manual for instruction on reviewing as to form.

A uniform law is a type of draft that is prepared outside of the Office, but uniform laws come with unique drafting rules and guidelines. For information about drafting uniform laws, see Chapter 12 of this manual titled "Guidelines for Drafting Uniform Acts".

1.4.4 Use of Drafting Notes.

Drafting notes are a tool that can be very useful to the drafter. **<{*A drafting note is in bold, italicized, and underlined font inside braces and angle brackets, as shown here.*}>** This icon on the WordPerfect toolbar will insert a drafting note into a document: 

A drafting note is an effective method to communicate questions or comments to a bill sponsor or other interested person, indicate places where the drafter inserted a change, explain the reason for a particular drafting convention, or raise policy or practical questions. After the questions are answered or resolved, the drafter or legislative editor can delete the codes and remove the questions from the draft.

1.5 Workflow of Bill Preparation

Each drafter should become familiar with all of the steps involved in bill preparation by the Office of Legislative Legal Services, from the date a request for bill drafting is received through delivery to its House or Senate sponsor for introduction.

These steps are summarized below.

Bill Request: As described in section 1.1.2 above, a legislator, authorized staff member, or other person submits a bill request. If submitted by persons other than sponsor or an authorized staff member of the sponsor, the bill is not considered "submitted by the legislator" until the legislator has notified the Office either orally or in writing that he or she will actually sponsor the bill request.

Docketing: Each bill request is assigned an LLS Number. A description of the bill is then logged on an electronic "member card" in CLICS. Every step of the bill's progress is tracked through CLICS so a bill draft can be tracked at all times. The bill request is assigned to a team and sent to the team leader for assignment to a staff attorney or legislative editor.

Drafting: The legislator's idea is drafted into legal language and form.

Legal Editing: A legislative editor checks the drafter's work for errors, oversights, and deviations from standard form, checks the correctness of references to C.R.S., federal law, and other sources, and checks the bill draft against existing law if amended. LEs may suggest updates to bills. LEs should raise a concern if they notice conflicting updates between bills or within a bill.

Team Leader's Revision: The team leader or the team leader's assistant reviews the bill for constitutional and other legal issues and checks the bill title and bill summary. A legislative editor will make any necessary changes following revision and return the bill to the drafter.

Bill Sponsor Review: The drafter forwards the prepared draft to the bill sponsor and any authorized contact people for their review and comment. Any requested changes are resolved and any changes are incorporated in a redraft, which is usually circulated again to the bill sponsor and any authorized contact people after editing and revising. The sponsor approves the bill for introduction.

Assembling and Delivering: Legislative editors are responsible for assembling the bill with sponsor sheets and a bill back. Depending on any applicable rules, deadlines, processes, and sponsor preferences, bills are delivered either directly to the Secretary of the Senate or the Chief Clerk of the House for introduction or to the sponsor, who will submit the bill to the Secretary of the Senate or the Chief Clerk of the House; except that delayed bills in the House are delivered to House Leadership for review and official delayed bill permission. The bill is numbered by the Secretary or Clerk and assigned to a standing committee by the presiding officer.

1.6 Tracking a Bill Through the Legislative Process

Upon introduction, a bill is advanced through the legislature to passage or defeat. House Rule No. 29 describes the course of a bill that is introduced in the House, and Senate Rule No. 25 sets forth the course of a Senate bill. Amendments to bills can be proposed by members when the bill is being considered by a committee to which a bill is referred or by members when the bill is being considered on second or third reading. For a discussion of procedure and responsibilities in amending a bill, see Chapter 3 of this manual titled "Amendments to Bills".

Amendments made in the House are indicated in subsequent versions of a bill by the use of shading and amendments made in the Senate are indicated by double underlining.

Bills are identified at different stages of the legislative process by the following terms:

- **Printed bill:** The bill as introduced, before any amendments are added. The printed bill will be labeled as the "introduced" version.
- **Engrossed bill:** The bill as passed on second reading in the house of origin, including any amendments adopted by that house on second reading. If no amendments are made to the printed bill, the printed bill is the engrossed bill.
- **Reengrossed bill:** The bill as passed on third reading in the house of origin, including all amendments adopted by that house. The reengrossed bill is transmitted to the second house.
- **Revised bill:** The bill as passed on second reading in the second house, including any amendments made to the bill on second reading by the second house.
- **Rerevised bill:** The bill as passed on third reading, including any amendments made by the second house on third reading. The rerevised bill is then transmitted back to the house of origin for any further action that it may have to take on the bill, or for enrollment and transmittal to the Governor for action.
- **Enrolled act:** The bill in final form as adopted by both houses for transmittal to the Governor.

See the Glossary in Appendix I of this manual for a more detailed list of terms and definitions.

Note: Resolutions and memorials are governed by House Rule No. 26 and Senate Rule No. 30. Resolutions and memorials can be discussed and acted on the same day they are introduced, laid over one day, or assigned to a committee. Resolutions and memorials are debated only once on the floor of the respective houses. Concurrent resolutions, on the other hand, are treated in the same manner as bills and require a second and third reading in both houses.

Chapter 2: Drafting a Bill

2.1 Title

The title is a critical part of a bill, and drafting the title is sometimes the most difficult and challenging part of bill drafting. Although this section 2.1 contains important information and considerations about drafting the bill title, drafters should also consult the memos contained in Appendix F.1 of this manual.

2.1.1 The Single-Subject Requirement[1]

The state constitution requires that a bill, other than a general appropriation bill, contain one subject, and that subject must be clearly expressed in the bill's title. This requirement is found in section 21 of article V of the state constitution:

> No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

A bill can contain any number of sections and provisions so long as they relate to one subject. The Colorado Supreme Court has held that if one general subject matter is expressed in the title, the inclusion in the bill of subdivisions of the general subject matter does not violate this constitutional requirement. *Clare v. People*, 9 Colo. 122, 125-126, 10 P. 799, 801-802 (1886). Furthermore, a bill may amend any number of different statutes so long as all the amendments made to those statutes relate to one general subject. For example, in order to comply with a judicial reform amendment to the state constitution, the General Assembly enacted legislation to change the jurisdiction of certain courts and to repeal from the statutes all references to justices of the peace and constables. The act accomplishing this purpose amended over 400 different sections of existing statutes under a general title, "Concerning courts". See Ch. 39, Session Laws of Colorado 1964, page 203.

A bill that includes a subject that is not contained in its title, however, is void as to the subject not expressed in the title. In *Bd. of County Comm'rs of Teller Co. v. Trowbridge*, 42 Colo. 449, 95 P. 554 (1908), the Colorado Supreme Court held that a statutory change in a district attorney's salary in an act, the title of which related to "fees", was void because "salary" was not clearly expressed in the title and was not germane to the subject expressed in the title.

[1] Click here for an excerpt of a memorandum, written by Rebecca C. Lennahan in 1971, concerning the one-subject and original purpose rules found in the state Constitution for bills and bill titles.

The Colorado Supreme Court has repeatedly held that generality in the title to an act is not objectionable, and that if matters contained in an act are germane to the subject of the title, the requirements of section 21 of article V are satisfied. See the C.R.S. annotations to that section.

However, in 1987 the Court struck down a bill that coupled expenditure and program cuts with revenue and fee increases in order to fund that session's spending priorities, even though the Court conceded that all sections in the bill related to a single subject that was stated in the bill's title. See In re House Bill No. 1353, 738 P.2d 371 (Colo. 1987). The bill's title was "CONCERNING AN INCREASE IN THE AVAILABILITY OF MONEYS TO FUND EXPENDITURE PRIORITIES FOR THE 1987 REGULAR SESSION OF THE GENERAL ASSEMBLY THROUGH REALLOCATION OF FUNDS, PROGRAM CUTS, EXPENDITURE REDUCTIONS, USE OF REVENUE FROM UNCLAIMED PROPERTY, AND INCREASES IN FEES." The Court, noting that the single common feature stated in the title was "not sufficient", concluded "that these diverse and incongruous subjects impermissibly impede achievement of the goal that each legislative proposal be considered on its merits, and intrude on the governor's ability to exercise the veto power." Id., at 373.

It appears that if a person wishes to challenge legislation based on a defect in the bill title, the person must bring a judicial action after the legislation is enacted but before the enactment, in the subsequent legislative session, of the annual bill that reenacts laws passed in the previous session. *Olin v. City of Ouray*, 744 P.2d 761 (Colo. App. 1987), rev'd on other grounds, 761 P.2d 784 (Colo. 1988).

In 1971, the Office of Legislative Legal Services, known at that time as the Legislative Drafting Office, published a research memorandum titled "Bills to Contain One Subject" that explores the single-subject requirement in some detail. Additionally, the Office prepared another memorandum, last updated in 1997, that provides guidance regarding the single subject and original purpose requirements. The relevant portion of the 1971 memorandum and the 1997 memorandum are contained in Appendix F.1 of this manual.

2.1.2 Titles - General, Specific, Narrow

Bill titles may range from very broad to very narrow.

> *General:*
>
> A BILL FOR AN ACT CONCERNING SCHOOLS.
>
> (The body of the bill could contain any matter concerning schools.)
>
> *Specific:*
>
> A BILL FOR AN ACT CONCERNING THE METHOD OF FINANCING PUBLIC SCHOOL TRANSPORTATION.

(The body of the bill could contain any matter concerning financing transportation for public school children, but could not contain matters, for example, concerning the powers of school boards to finance the construction of school buildings.)

Narrow:

A BILL FOR AN ACT CONCERNING THE DELAY OF STATE BOARD OF EDUCATION DEADLINES FOR IMPLEMENTING STANDARDS-BASED EDUCATION UNTIL A SPECIFIED DATE.

(The body of the bill could only contain matters pertaining to the delay of the state board's deadlines for standards-based education and could not contain matters pertaining to other education issues.)

The common practice of the Office is to use narrow titles on bills unless otherwise instructed by the legislator requesting the bill. This practice leaves the final determination of the nature of the title with the sponsor.

When working with the bill sponsor, the drafter should discuss with the sponsor the pros and cons of a narrow versus broad bill title. The sponsor may desire a broad title to allow flexibility and latitude in the addition of amendments during the course of the bill's passage. Alternatively, the sponsor may want a narrow title so that the bill cannot be altered by amendments containing matters not intended to be a part of the bill.

In any case, the drafter should be careful to avoid unnecessarily broad titles. While a title usually should not be so narrow as to prohibit amendments that are reasonably foreseeable and that have a reasonable relationship to the single subject of the bill, the title should not be so broad as to permit the addition of amendments that are only remotely related to the single subject of the bill. The drafter should secure the express approval of the requesting legislator before using a broad title and have good reasons for using such a title.

2.1.3 Guidelines for Drafting Bill Titles

In view of the strategic importance of the title and the necessity of complying with the constitutional single-subject requirement, the title should be drafted very carefully. The drafter should keep the following points in mind in drafting the title to any bill.

1. **Ensure the title covers the components of the bill.**

   The drafter should **either draft the title last or review the title to verify that it covers all subjects in the body of the bill after writing the bill**. The title should contain only the **subject** of the bill, **not** a table of contents or an explanation as to what the bill contains, as was done in 1966 in the "Metropolitan Stadium Act." See Ch. 36, Session Laws of Colorado 1966, page 124.
   See also Metzger v. People, 98 Colo. 133, 136, 53 P.2d 1189, 1191 (1936) ("a broad and

general title is better than a title attempting to catalogue the constituent parts of an act.")

Bills drafted outside the Office sometimes contain long and rambling titles. The drafter should not hesitate to replace such a title with one stating only the **one general subject** of the bill.

2. **Avoid using conjunctions.**

   If possible, conjunctions ("and" and "or") should be avoided in describing the subject of the bill because conjunctions suggest a violation of the constitutional single-subject requirement. For example, the title "A BILL FOR AN ACT CONCERNING INDIVIDUAL AND CORPORATE INCOME TAXES" may violate the single-subject rule by embracing two subjects: (1) Individual income taxes and (2) corporate income taxes. A better title might be: "A BILL FOR AN ACT CONCERNING INCOME TAXES."

   On the other hand, conjunctions are sometimes unavoidable and unobjectionable, such as where a subject is commonly described by a phrase that includes a conjunction and no single word exists to describe the subject. Examples: "Dependent and neglected children"; "sales and use taxes"; "alcohol and drug-related offenses"; "department of labor and employment".

3. **Avoid narrative titles.**

   Narrative titles are those that describe at length all matters addressed in a bill instead of stating a single subject common to all matters in the bill. The following is an example of a narrative title from a 1993 bill on workers' compensation: "CONCERNING THE RESPONSIBILITY OF INSURERS TO PAY THE TOTAL COST OF INDEPENDENT MEDICAL EXAMINATIONS IN WORKERS' COMPENSATION PERMANENT DISABILITY CASES TO RESOLVE ISSUES RELATED TO THE DETERMINATION OF MAXIMUM MEDICAL IMPROVEMENT OF THE CLAIMANT UPON REQUEST OF THE CLAIMANT SUBJECT TO REIMBURSEMENT THROUGH AN OFFSET AGAINST THE PERMANENT DISABILITY AWARD BASED ON ADJUSTED GROSS FAMILY INCOME OF UP TO ONE HUNDRED TWENTY-FIVE PERCENT OF THE FEDERAL POVERTY LEVEL PURSUANT TO THE INCOME CRITERIA FOR THE COLORADO MEDICALLY INDIGENT PROGRAM."

4. **Do not use the phrase "and for other purposes" in the title.**

   The phrase "and for other purposes" or similar terminology should not be used in a title. Although this phrase is used in federal legislation, it is not used in titles to Colorado legislation under any circumstances. In the event it is added to the title of a bill, it does not serve to include stray matters related or unrelated to the subject matter of a bill.

5. **Narrow titles can be risky.**

   It is important to remember that the narrower a title becomes, the greater the danger that a bill will contain a subject that is void because it is not covered in the title. In *People ex rel. Kellogg v. Fleming*, 7 Colo. 230, 3 P. 70 (1883), the Colorado Supreme Court held that where a title specifies that the bill is amending a designated section of a specific article, an amendment that adds to the designated section new and different matters affecting many other sections of the article not germane to the designated section is void.

6. **Broad titles can also be problematic.**

   On the other hand, remember that the title of a bill should not be overly broad. If possible, the title should be drafted to allow only those amendments that are foreseeable and are germane to the single subject of a bill.

   Where it is necessary to use a very broad title, the drafter should consider using "trailers" in the title to provide notice about the bill's major provisions. For example, consider the following title: "A BILL FOR AN ACT CONCERNING PROPERTY TAXES, AND, IN CONNECTION THEREWITH, MODIFYING PROCEEDINGS REGARDING ABATEMENTS AND PROVIDING FOR CERTIFICATION OF PROPERTY TAXES DUE AND UNPAID ON PERSONAL PROPERTY." In this example, the subject—"property taxes"—is very broad, but the trailer, which is the remainder of the title, provides helpful notice about the two major provisions of the bill.

7. **Appropriations should be indicated in the title.**

   The title of any bill that contains an appropriation section that makes or reduces an appropriation should indicate that fact. This is extremely useful information and, while the addition of this phrase is not required by the constitution, a law, or legislative rule, it is standard drafting procedure. See section 7.3.1 of this manual for the correct language for the trailers.

8. **Do not use C.R.S. citations in the title.**

   As a rule, citations to the Colorado Revised Statutes should not be used in a title. In a few rare cases, citations may be used, but please talk to the revisor of statutes. If cited, the abbreviation for Colorado Revised Statutes, i.e., "C.R.S.", should not be used; instead, "Colorado Revised Statutes" should be written in its entirety.

9. **Do not use blind titles.**

   The drafter should not use "blind" titles, such as "A BILL FOR AN ACT CONCERNING THE REPEAL OF ARTICLE 21 OF TITLE 23, COLORADO REVISED STATUTES", without stating the subject of the statutory material cited. Lack of a subject in the title causes confusion in

assigning the bill to committee and in indexing the bill. Additionally, a blind title fails to give notice of the contents of the bill. A title that states "A BILL OF AN ACT CONCERNING THE CREATION OF THE '__ ACT'" should also be avoided for the same reasons.

10. **Avoid subjective judgments and rationale in the title.**

    The drafter should avoid subjective judgments in the title such as: "A BILL FOR AN ACT CONCERNING IMPROVEMENTS IN MUNICIPAL ELECTION PROCEDURES." In this example, a better title might be: "A BILL FOR AN ACT CONCERNING MUNICIPAL ELECTION PROCEDURES." Similarly, the drafter should try to avoid stating the reason for a bill in the title unless necessary to narrow the subject of the bill. Example: "A BILL FOR AN ACT CONCERNING THE ADOPTION OF UNIFORM CHILD SUPPORT GUIDELINES TO COMPLY WITH THE FEDERAL OMNIBUS BUDGET AND RECONCILIATION ACT OF 1990."

11. **Avoid commas and other punctuation in the expression of the single subject.**

    In order to follow the single subject and original purpose constitutional mandates, the Office has adopted a general policy of composing bill titles that state the single subject at the beginning of the bill title. To help identify clearly a bill's single subject, a comma—or a period, if a trailer or reference to an appropriation is not included—is often placed at the end of the subject. This rule is generally stated as "the single subject is what comes before the comma". To avoid confusion and debate about what is the single subject of the bill title, drafters should not set off parenthetical information with commas or use a serial comma in the portion of the bill title that contains the single subject. Even though the comma might be grammatically correct, in the context of drafting a bill title, using that comma could cause problems.

    When the bill contains additional information in a "trailer" that appears after the comma for the single subject, the phrase "AND, IN CONNECTION THEREWITH," should be used. While "trailers" must be "germane," or related to the single subject, the words of the "trailer" are not considered part of the statement of the single subject of the bill title. Commas or semicolons may and should be used in the "trailer" portion of a bill title.

2.1.4 Titles on Recodification Bills

When an entire body of law is changed to reorganize and relocate provisions, the title may include the word "recodification". For example: "CONCERNING THE RECODIFICATION OF BANKING STATUTES." There is often debate as to whether a bill with this type of title can contain substantive amendments as a part of the reorganization. The Office is not aware of any rule or practice that would prohibit the inclusion of substantive changes, and there have been prior bills that did involve substance. However, this debate would be eliminated by not using the term

"recodification" and drafting a broader title for the bill. The drafter should discuss the implications of using "recodification" in a bill title with the member.

Sometimes bills contain a recodification of an entire body of law and are characterized by the sponsor as only reorganizing or relocating existing law without making substantive changes. Drafters have written bill titles such as "CONCERNING A NONSUBSTANTIVE RECODIFICATION OF COLORADO'S BANKING LAWS" in hopes of limiting amendments to the bill to nonsubstantive or technical changes. The drafter should discuss with sponsors that a title that refers to recodification or nonsubstantive recodification may not prevent substantive amendments from being added to the bill. What is substantive may be subject to debate and ultimately depends upon the wishes of the committee or the body at the time an amendment is offered to the bill.

2.1.5 Amendments to Titles

When a bill is amended after its introduction, it may be necessary or appropriate to amend its title. A title may be amended to narrow, **but not to broaden**, the subject matter of the bill as introduced. For additional considerations in amending bill titles, see Chapter 3 of this manual titled "Amendments to Bills."

2.1.6 Title Opinions

There are times when a drafter will be asked for an opinion as to whether a provision fits under a bill title. This normally occurs when a chair is considering whether an amendment fits under the title. If this question is asked when the drafter is testifying in committee, the drafter needs to handle the situation carefully because the chair is the final arbiter as to whether an amendment fits under the title and the drafter does not want to contradict the chair's final ruling. The drafter should handle requests for title opinions as follows:

1. If possible, the drafter should explain the arguments in favor of and against the amendment fit under the title to assist the chair in making a title ruling.

2. If a member insists, the drafter can provide the member with an answer to a title question but should make it clear to the member that **the opinion is advisory only and is not binding on the chair. The drafter should not provide an answer to the inquiring member after the chair has already ruled on the issue.**

3. A drafter should not put title opinions in writing unless the member insists. In this situation, the drafter should advise the member that the office will speak with the members of the Executive Committee from that member's house prior to writing the opinion.

2.2 Bill Topic

Each bill, resolution, and memorial is assigned an unofficial bill topic. The bill topic is a brief phrase that identifies the measure according to its primary topic, purpose, or effect. It is used to identify the measure in calendars, journals, bill status reports, the subject index, and other legislative records. It will also be displayed on the voting machines in the House chamber and may appear in the televised proceedings. The bill topic is drafted when the bill, resolution, or memorial itself is drafted. It does not appear on the introduced measure, but it is written on the request sheet and entered into CLICS.

Before the 2015 regular session, bill topics were referred to as "short titles". To avoid confusion between statutory or nonstatutory short titles and short title descriptions of bills, in 2014 the term used for the short description of the bill was changed to "bill topic".

2.2.1 Guidelines for Drafting Bill Topics

1. The bill topic should provide as much identifying information as possible within a maximum size of 50 characters, including spaces, punctuation, and numerals.

2. Punctuation should not be used in the bill topic except hyphens and apostrophes.

3. The bill topic should identify the bill's primary topic. An awareness of the way the bill topic is used in other documents should aid the drafter in writing a bill topic that is user-friendly and achieves the purpose of identifying the bill for the public. The bill topic is pulled from the CLICS program for insertion in the daily House and Senate calendars. When a bill is listed for a committee hearing, the entry will include the bill number, the sponsors' name, and the bill topic. In addition, each word of the bill topic for a bill is retrieved and alphabetized, one word at a time, to create the subject index. Members of the public, as well as legislators, staff, and lobbyists, look at the one-word entries in the subject index to identify bills. For example, someone looking for a bill affecting motor vehicle insurance rates would expect to find the bill by looking at the entries for "Insurance", "Motor", or "Vehicle". When drafting a bill topic, the drafter should think about how someone likely to be affected by the bill or looking for a certain type of bill would look for the bill in the index. Instead of focusing on the purpose of the bill, focus on who or what is affected, e.g., insurance industry, small business, health department, or what the basic subject matter is for the bill. Simplifying the long title into a shorter version may not communicate the topic of the bill.

4. A bill topic should not be used to achieve a partisan purpose or effect. The purpose of a bill topic is not to make the bill seem more attractive by including"spin". Rather, the purpose is to describe the primary topic, purpose, or effect of the bill. Accordingly, a bill topic should be written in objective and neutral language. For instance, a bill topic should

not include subjective, value-laden words like "improve," "enhance," or "better"; instead, use neutral descriptions such as "more stringent," "decrease requirements," "more funding," "standardize," etc.

5. In particular, do not use the word "act"—in the sense of a bill that has become law—and do not refer to the year of enactment. This information is redundant and not helpful to the reader.

6. When possible, the bill topic should state a subject, like "Alcohol Beverages Produced In CO". However, the bill topic may also use verbs like "Recodify Traffic Laws" or "Retaining Abandoned Property".

7. The bill topic does not have to be 100% technically accurate and does not have to identify 100% of the contents of the bill. The drafter should try to use "plain English" words in the bill topic in the place of legalistic, technical words that may be used in the title or the body of the bill. However, the drafter must be careful to use reasonably accurate terms and avoid misstating the bill's primary topic, purpose, or effect when substituting plain English words for technical terms.

8. The bill topic is not amended or updated as the bill is amended. Therefore, the drafter should try to avoid specific information that may change after the bill is introduced.

9. The bill topic should be styled using the Chicago Manual of Style's rules for capitalizing titles. There should be no period at the end. The bill drafting macro automatically puts quotation marks around the bill topic.

10. Articles such as "the," "a," etc., should always be omitted. If necessary to squeeze other key words into the bill topic, the drafter may also omit connecting prepositions even if the resulting bill topic does not make strict grammatical sense. For example: "CO Youth Small Game Hunting Licenses"; "Workers' Comp Motor Vehicle Accidents".

11. Because each of the words of the bill topic is used individually to create the subject index that is used by the public and legislators to identify bills, the use of abbreviations is discouraged. If you do use abbreviations, use standard and consistent abbreviations. The list of standard abbreviations can be found on the General Assembly's website.

12. Do NOT make up abbreviations. Use abbreviations for words only when their meaning is widely recognized, ex: RTD, TANF. If a drafter wishes to use an abbreviation that does not appear on the list of approved abbreviations, the drafter should consult with the Revisor of Statutes. Do not use periods in abbreviations.

13. Apply this TEST: Separate out the words from the proposed bill topic and ask, "Would the average subject index user think of that individual word to try to find this bill?" If the answer is "no," then the drafter should modify the bill topic.

14. Do NOT abbreviate every word in the bill topic. It is recommended that the drafter use no more than two abbreviations in a bill topic.

15. The subject index is useful if it groups similar bills together under the same key words. If there are multiple bills on the same subject, the drafters and the teams should attempt to identify those similar bills using the same key words in the bill topics for those bills. For example, all insurance bills should have the word "insurance" in the bill topic. All medicaid bills should have the word "medicaid" in the bill topic.

2.3 Bill Summary

Joint Rule No. 29 of the Senate and House of Representatives requires that every bill and concurrent resolution include a brief summary written by the Office of Legislative Legal Services. The drafter should write the bill summary **after** drafting the bill or concurrent resolution and should attempt to state in the summary what the bill would accomplish. See Appendix A of this manual for examples of bill summaries in the bill samples.

2.3.1 Guidelines for Drafting Bill Summaries

1. The bill summary should be brief yet easy to read and understand. It should provide a succinct, clear, and accurate synopsis of the major points of the bill.

2. The drafter should try to use "plain English" words in the bill summary in place of legalistic, technical words that may be used in the body of the bill. For example, a bill summary may describe changes in the amounts recoverable in civil actions for "wrongful death," although the statute amended by the bill uses the term "actions notwithstanding death" rather than the term "wrongful death." However, the drafter must be careful to use reasonably accurate terms and avoid making debatable legal conclusions when substituting plain English words for technical terms.

3. In order to enhance readability, bill summaries should be written in complete sentences and may emphasize significant points through the use of bullets. The bill drafter is also encouraged to refer to sections of the bill by section number when practicable and if doing so would be helpful to the reader in determining what the different parts of the bill do. Section numbers in the summary should appear in bold type. For example, "**Section 1** of the bill requires . . ."

4. A bill summary for a bill that amends current law should describe how the bill will **change** current law, rather than how the law **will read** after the change is made. This is especially important in describing changes made by repealing and reenacting current law. For example, if current law requires the payment of a fee either in cash or by check, and the bill proposes to eliminate payment by check, then the bill summary should state

something like, "The bill eliminates the option of paying the fee by check", rather than "The bill requires payment of the fee in cash".

5. The substance of a repealed statute should be indicated in the summary if it is important to the bill.

6. When it is helpful for understanding the changes in a bill, the bill summary should provide some explanation of existing law and the legal context of the changes.

7. The bill summary should describe changes in order of importance or in some other logical order, which may not mirror the order in which the changes appear in the body of the bill. Additionally, related changes should be described together in the summary. For example, the most important changes could be described first, and minor changes could be mentioned last. The bill summary could also list changes made by the bill in the order in which the affected events are likely to occur e.g., changes to procedures for obtaining driver's licenses could be described before changes to penalties for traffic offenses.

8. Whenever practical, the bill summary should include specific numbers, dates, and amounts contained in a bill, rather than using phrases such as "after a specified date," "by a specified amount," etc. A drafter should use digits to express numbers, with the exception of the number "one", fractions, ordinal numbers, and the first word of a sentence. Use symbols such as the dollar sign and the percent sign instead of words. Long numbers, such as "2 billion", can be expressed with a combination of digits and words. For example: "**Section 2** of the bill increases the state sales and use tax by .25%, effective November 1, 1995. **Section 3** increases the cap on the amount of fees that may be retained by the division from $2 billion to $2.5 billion."

9. In many cases, however, it may be more useful for the reader to exclude specific figures, amounts, or percentages. For example, if a bill contains a complex formula, the bill summary should not attempt to explain it fully. Additionally, if the figures or amounts are expected to be further negotiated and modified by amendment, the drafter should consider excluding them from the bill summary. Dates are commonly negotiated and changed by amendment.

10. The drafter should avoid overusing the word "provides" in the bill summary. Instead, the drafter should use more specific verbs, such as "increases," "establishes," "creates," etc. The drafter should also avoid starting each sentence in the bill summary with the phrase "The bill..." The bill summary should contain a variety of sentence structures, should avoid sounding overly repetitive or mechanical, and should be written in present tense and active voice.

11. The drafter should avoid statements of meaningless information, such as "The bill amends definitions" or "The bill amends the definition of 'public employee'". In these

examples, the drafter should actually describe the definitional changes and how they change substantive law, if the changes are important to the bill; otherwise, it is not necessary to mention them at all.

On the other hand, if a bill contains numerous minor changes or conforming amendments, it may be useful to include a statement like "**Sections 5 to 9** of the bill make conforming amendments." Similarly, if a bill contains a legislative declaration and the drafter wants to note that, it should be noted with a statement like "**Section 1** of the bill makes legislative findings and declarations."

12. The drafter should always check a bill summary submitted with a draft that is prepared outside the Office to verify that the summary reflects what the bill actually does and to ensure the bill summary is written in accordance with standard drafting practices.

13. If a bill is recommended by an interim or statutory committee, the summary should begin with the name of the committee. The name of the committee should be in bold type and followed by a period that is also in bold type, and the first letter of each significant word should be capitalized as follows:

Committee on Legal Services.
Executive Committee of the Legislative Council.
Interim Committee on School Finance.
Joint Budget Committee.
Transportation Legislation Review Committee.

2.3.2 Policy for Updating Bill Summaries After Bills are Reengrossed

Upon the approval of the Committee on Legal Services, the Office started updating bill summaries during the 2010 legislative session. The General Assembly amended Joint Rules 21 and 29 of the Senate and House of Representatives in the 2010 session to implement the updating of bill summaries. Joint Rules 21 and 29 provide, in pertinent part:

Joint Rules of the Senate and House of Representatives

21. Bills Which Amend Existing Law

(c) The Office of Legislative Legal Services under the supervision of the Committee on Legal Services shall adopt and implement drafting practices to improve the format of bills introduced in the General Assembly in order that members of the General Assembly and the public will have a better understanding of the content of bills and the relationship of bills to existing law. **Such practices may include the formatting and updating of bill summaries. [Emphasis added].**

29. Bill Summaries

(a) Every bill and concurrent resolution which is introduced shall include a brief summary thereof to be written by the Office of Legislative Legal Services. **Bill summaries shall be formatted and may be updated as directed by the Committee on Legal Services in accordance with Joint Rule 21. [Emphasis added].**

The Committee on Legal Services directed, and the Office's policy is, that the Office staff must **promptly update the bill summary after the bill has been reengrossed in the first chamber so that it will be available 24 hours prior to the first committee hearing in the second chamber.** Because of the need to prepare and print the reengrossed bill as soon as possible after its passage, the Committee on Legal Services determined that the updated bill summary would not appear on the reengrossed bill but would be available online on the General Assembly's website. A notice under the bill summary heading on the printed, engrossed, reengrossed, revised, and rerevised versions of the bill states that the bill summary applies to the bill as introduced and does not reflect any amendments that may be subsequently adopted, and that if the bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of the bill will be available on the bill detail page on the General Assembly's website.

Since the legislators and the public rely on the updated bill summary and the Committee on Legal Services directed that it should be prepared in a timely fashion, it is very important that the drafter completes an updated bill summary as soon as possible and, at a minimum, in compliance with the direction from the Committee on Legal Services and the Office's policy.

The drafter must comply with the following guidelines when updating bill summaries:

1. The updated bill summary must reflect changes contained in the reengrossed bill that are made through amendment. Sometimes a bill is amended, but the original bill summary still adequately describes the bill. In that case, the drafter still needs to create and finalize an updated bill summary indicating that the summary still applies to the reengrossed bill.

2. When updating a bill summary, the drafter uses strike type and italics to indicate changes from the original bill summary. This format was chosen to eliminate any confusion between changes made to the bill summary and amendments made in strike type and small caps in the body of the bill.

3. If the bill was not amended in the first house, the drafter still needs to create and finalize an updated bill summary document to indicate the fact that no changes to the bill summary were made.

4. If there were any errors made in the original bill summary, the drafter can correct the error if it is still relevant to the reengrossed bill at the same time that the drafter is updating the bill summary for the second chamber.
5. An automatic email will notify the drafter when the bill has passed on 3rd reading in the house of introduction.
6. The drafter prepares the updated bill summary by following the "Updated Bill Summary Procedure". A legislative editor will edit the draft updated bill summary before finalizing the updated bill summary and posting it on the General Assembly's website.

2.4 Enacting Clause

Section 18 of article V of the state constitution provides: "The style of the laws of this state shall be: 'Be it enacted by the General Assembly of the State of Colorado'."

Section 2-4-213, C.R.S., provides:

> **2-4-213. Form of enacting clause.** All acts of the general assembly of the state of Colorado shall be designated, known, and acknowledged in each such act of said state as follows: "Be it Enacted by the General Assembly of the State of Colorado".

The "enacting clause," as above stated, is placed immediately before the first section of a bill. The wording cannot be varied since it is fixed by the constitution and statutory law. The clause must be included before introduction of the bill; failure to include it could invalidate the entire act. The prescribed form, placed at the beginning of the bill text, is as follows:

Be it enacted by the General Assembly of the State of Colorado:

The line on which the enacting clause appears is numbered "1". The macro to create a bill draft automatically adds this clause to every bill.

2.5 Body of a Bill

2.5.1 Prohibition on Introduction by Title Only

Section 19 of article V of the state constitution provides in part that "No bill shall be introduced by title only." This provision specifically prohibits a former practice in the General Assembly that allowed bills to be introduced with a title, the enacting clause, and the word and figure "SECTION 1." The body of the bill would then be "filled in" at a later time. Now, every bill must be introduced "in full," that is, with a complete text.

2.5.2 Sectioning and Paragraphing - Terminology

The Colorado Revised Statutes are divided into 46 titles (1-25, 25.5, 26, 26.5, and 27-44), and then each title is divided into articles. An article may be further divided into parts, but only if the article contains more than one part. Articles or parts are then divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

[Title]#-[Article]#-[Section]#. Headnote. (1) Subsection

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

In a three-part section number such as "5-6-101," "5" is the **title** number, "6" is the **article** number, and "101" is the **section** number within the article and title. The three numbers combined together as "5-6-101" constitute a section of C.R.S. When there is more than one part in an article, the first digit of a three-digit section number and the first two digits of a four-digit section number designate the **part**. For example, in section "5-6-301," the section is found in **part** 3 of article 6 of title 5.

A drafter should use short sections when drafting new material. This will help in later amendments and will reduce the length of amendments. When a long section containing several different matters must be amended, the General Assembly sometimes becomes involved in considering not only the particular matter at issue but other matters that the sponsor of the bill might not have wished to address.

There is no definite rule as to the amount of material that should be put in one section, but, generally, each distinct topic should be in a separate section subdivided as necessary. One test for determining whether a section is too long is to attempt writing a headnote for the section. If a short headnote cannot be written, the section is probably too long.

2.5.3 Section Headings - Headnotes

After each section number there is an explanatory heading or "headnote" that should briefly describe the content of the section. Section 2-5-113 (4), C.R.S., provides in part that "The classification and arrangement by title, article, and numbering system of sections of Colorado Revised Statutes, as well as the section headings ... shall be construed to form no part of the legislative text but to be only for the purpose of convenience, orderly arrangement, and information; therefore, no implication or presumption of a legislative construction is to be drawn therefrom." Thus, changes in section headings may be handled by the Revisor of Statutes and do not need to be amended by bills.

While the headnote is mostly informational, the drafter should employ care and good judgment in selecting the language of section headings. In *In re U.M. v. District Court*, 631 P.2d 165 (Colo. 1981), the Colorado Supreme Court held that, although no implication or presumption of legislative construction is to be drawn from a heading added by the Revisor of Statutes, a "legislatively selected" heading may be used by a reviewing court as an aid in construing a statute section.

If the drafter of a bill wishes to change a section heading to reflect the content of the section as amended by the bill, the drafter simply rewrites the section heading. The drafter does not use strike type and small caps to show the changes to the section heading.

In a few instances, subsections within a section will also contain headnotes for clarity and easy reference. For example, see section 10-16-139, C.R.S.

2.5.4 Amending Clauses

The body of every bill consists of sections numbered "**SECTION 1.**", "**SECTION 2.**", "**SECTION 3.**", etc. Except for sections having only a temporary effect, each of these section numbers is followed by an "amending clause" and, in a separate paragraph, by the existing law as it is to be amended or by new parts, sections, etc., that are to be added to the C.R.S. These amending clauses cite the existing law to be amended or added to, refer to "Colorado Revised Statutes" or the "constitution of the state of Colorado," and are instructions as to how the bill proposes to modify current law.

In some cases, the current version of the material being amended or added to has not yet been published. For example, this may occur when amending material previously amended or enacted during the same legislative session. In this situation, the amending clause will cite the material being amended or added to, in the form described above, followed by a phrase in the following form: "**amend as amended [or enacted] by House Bill 12-1234** ...". See Appendix B.15 and B.16 of this manual for examples of this type of amending clause.

2.5.4.1 General Rules for Drafting Amending Clauses

1. You can combine multiple types of provisions in the same C.R.S. section within a single amending clause, i.e., an amending clause may amend subsection (1)(b) and (1)(c)(II) in a single C.R.S. section in one amending clause.

2. Amending clauses always begin with "In Colorado Revised Statutes," unless the bill amends another document.

3. You will use "instructions" for what is to happen with the provision being amended, repealed, etc. These instructions are grouped and appear in a certain order, as outlined in appendix B.1.1 of this manual.

4. Instruction words, such as "amend," "repeal," "add," etc., appear in bold.

5. The type of provision you're working with, i.e., a part, article, section, subsection, etc., will dictate where the bold instruction word goes — either before the listed provision or after.

6. Each instruction phrase is separated by a semicolon, i.e., the amended portion stands alone; the repealed portion stands alone; etc. Within each instruction phrase, the provisions appear in numeric and alphabetic order. Example: repeal (1), (2)(d), (2)(e), and (5).

7. At the end of the clause, use "as follows:", unless it's a straight repeal.

8. References to introductory portions appear after the C.R.S. provision. Example: In Colorado Revised Statutes, 23-2-103, **amend** (2) introductory portion and (6) as follows:

9. In some instances, you can combine two or more sections, parts, or articles in one amending clause so long as the provisions are on the same level and in the same article or title, e.g., add two new parts or two new articles in a single amending clause, but do not add a new part and a new article in the same amending clause. See Appendix B.1.3 of this manual for guidelines for combining instructions in a single amending clause.

10. Use the amending clause macro, which will properly format the amending clause based on these general rules. In some special situations, the drafter will need to modify the amending clause to address the circumstances and should confer with a team editor or the Publications Coordinator to ensure the amending clause accurately reflects how the bill is affecting current law.

While this chapter contains general information about amending clauses and a few examples, drafters should consult Appendix B of this manual for more comprehensive and specific information and examples to assist in drafting the amending clause.

2.5.4.2 Amending Current Statutory Material

2.5.4.2.1 Simple Amendment to a Single C.R.S. Section

The simplest form of an amending clause occurs when amending a section that is contained in the current volume of C.R.S. In this case, the amending clause should read as follows:

> **SECTION #.** In Colorado Revised Statutes, **amend** 32-7-128 as follows:

If the section to be amended was added in a bill enacted at the same legislative session, the amending clause should read as follows:

> **SECTION #.** In Colorado Revised Statutes, **amend as enacted by House Bill 12-1101** 32-7-128 as follows:

When only the introductory portion of a section or subsection (and none of its subdivisions) is to be amended, the amending clause should read as follows:

> **SECTION #.** In Colorado Revised Statutes, 32-1-103, **amend** the introductory portion as follows:

2.5.4.2.2 Multiple Amendments Within the Same C.R.S. Section

Amendments to two or more subdivisions of the same C.R.S. section may be combined in one bill section as follows:

> **SECTION #.** In Colorado Revised Statutes, 8-73-107 **amend** (1)(c), (1)(d)(II), (2), and (4) as follows:

Another type of combination may be used when one or more subdivisions of a section are amended and new material is also added:

> **SECTION #.** In Colorado Revised Statutes, 8-73-107, **amend** (1)(c) and (1)(d)(II); and **add** (1)(k) as follows:

Additional examples of amending clauses to amend current law can be found in Appendix B.2 of this manual.

2.5.4.2.3 Amending an Entire Provision

Whenever changing an entire provision, such as a section, subsection, or paragraph, any action can be performed on that provision and combined with other actions, whether it is amending, adding, or repealing.

Although an amending clause can combine many different instructions and perform a variety of different actions in one provision, when everything in a provision is being amended or the entire

provision is being included in the bill for reader-friendly purposes, the amending clause does not need to be broken up into separate instructions for each action being performed. Instead, use the simple amending clause that amends the entire provision. Here is an example of amending an entire section:

> **SECTION #.** In Colorado Revised Statutes, **amend** 18-1-201 as follows:
>
> **18-1-201. State jurisdiction.** (1) A person is subject to prosecution in this state for an offense ~~which he~~ THAT THE PERSON commits, by ~~his~~ THE PERSON'S own conduct or that of another for which ~~he~~ THE PERSON is legally accountable, if:
>
> (a) The conduct constitutes an offense and is committed either wholly or partly within the state; or
>
> (b) ~~The conduct outside the state constitutes an attempt, as defined by this code, to commit an offense within the state; or~~
>
> (c) The conduct outside the state constitutes a conspiracy to commit an offense within the state, and an act in furtherance of the conspiracy occurs in the state; or
>
> (d) THE CONDUCT WITHIN THE STATE CONSTITUTES AN ATTEMPT, SOLICITATION, OR CONSPIRACY TO COMMIT IN ANOTHER JURISDICTION AN OFFENSE PROHIBITED UNDER THE LAWS OF THIS STATE OR THE OTHER JURISDICTION.
>
> (2) Whether an offender is in or outside of the state is immaterial to the commission of an offense based on an omission to perform a duty imposed by ~~the law of this state~~ THIS ARTICLE 1.

The effect of the amending clause is that the introductory portion to subsection (1), (1)(a), and (2) are amended, (1)(b) is repealed, and (1)(d) is added. When the section is printed in the statutes, (1)(b) will be shown as "deleted by amendment" rather than as repealed because the amending clause states that the section is "amended". See, for example, sections 10-16-104 (4) and 18-20-112 (3):

> **10-16-104. Mandatory coverage provisions - definitions - rules.**
>
> (4) (Deleted by amendment, L. 2009, (HB 09-1204), ch. 344, p. 1802, § 2, effective January 1, 2010.)

> **18-20-112. Unlawful entry by excluded and ejected persons.**
>
> (3) (Deleted by amendment, L. 2023.)

In the past, the deleted by amendment notation included the bill number, Session Laws location, and effective date, as shown in section 10-16-104. The current practice is to show only the Session Laws year, as shown in section 18-20-112, since the other information is contained in the source note for the section. Both versions appear in the C.R.S.

2.5.4.3 Adding New Statutory Material

2.5.4.3.1 New Sections

New sections may be added at the end of a statutory title, article, or part or inserted at the most logical point between existing statutory material - sometimes through the use of decimals. The amending clause for adding a new section or sections should read as follows:

> **SECTION #.** In Colorado Revised Statutes, **add** 10-3-911 as follows: *{When adding a single C.R.S. section}*
>
> or
>
> **SECTION #.** In Colorado Revised Statutes, **add** 10-3-911, 10-3-912, and 10-3-913 as follows: *{When adding multiple C.R.S. sections to the same part or article}*

Use whole numbers, not decimal points, if adding new sections at the end of an article or part. The new sections would be numbered, for example, 10-3-911, 10-3-912, etc. Decimal points may be used to insert new sections between existing sections. For example, to insert new sections between sections 10-3-904 and 10-3-905, use section numbers such as 10-3-904.3, 10-3-904.5, 10-3-904.7, etc. New sections inserted between existing sections should be numbered to allow for later insertion of additional sections. For example, the first section inserted between sections 10-3-904 and 10-3-905 should not be 10-3-904.1 unless the new section is so closely connected to 10-3-904 in subject matter that it is inconceivable anyone would later want to insert a different section between 10-3-904 and 10-3-904.1.

A new section may be placed before the first section in an existing article or part in three instances only:

1. To add a new "short title" section, which must be numbered as section #-#-100.1;
2. To add a new "legislative declaration" section, which must be numbered as section #-#-100.2;
3. To add a new "definitions" section, which must be numbered as section #-#-100.3.

2.5.4.3.2 New Subsections, Paragraphs, Subparagraphs, and Sub-subparagraphs.

New subsections, paragraphs, subparagraphs, or sub-subparagraphs may be added either at the end of the existing statutory material or at a logical point within the existing statutory material. The amending clause in either case should read as follows:

> **SECTION #.** In Colorado Revised Statutes, 7-30-104, **add** (3) as follows:
>
> or

SECTION #. In Colorado Revised Statutes, 7-30-109, **add** (1)(c) as follows:

Decimal points may be used for adding new subsections, paragraphs, subparagraphs, and sub-subparagraphs. For example, if the most logical location to add a new subsection to section 7-30-104 is between subsections (1) and (2), a new subsection (1.5) could be added.

2.5.4.3.3 New Titles, Articles, and Parts

When the new material is sufficiently long and is not directly related to specific provisions of existing law, a new article or part should be added. **New titles are rarely added, and the drafter should consult with the Revisor of Statutes before adding a new title.**

New articles are either added at the end of an existing title or inserted between existing articles. The amending clause to add a new article should read as follows:

SECTION #. In Colorado Revised Statutes, **add** article 8 to title 2 as follows:

If a new article were to be added at the end of title 1, its sections would be numbered 1-46-101, 1-46-102, et seq. Some titles have article numbers reserved for expansion. See, for example, title 12, C.R.S.

If the new article fits most logically **between** two existing, consecutively numbered articles, it can be designated with a decimal point. For example, article 5 of title 33 concerns protecting fishing streams. When a new article was needed to create a fish health board, it naturally should be grouped with the other fishing article, so it was added as article 5.5. The new article contains sections numbered 33-5.5-101, 33-5.5-102, et seq. The designation of an article as ##.5, rather than as article ##.1, allows future articles to be added either before or after the new article.

In extreme situations, a new article numbered "0.5" could be inserted before the first article in an existing title. This practice is discouraged and should only be done where the new material simply cannot be placed anywhere else in the statutes.

New parts are always added at the end of an article. For example, if new parts were added to article 2 of title 2, the sections in successive new parts would begin with 2-2-2001, 2-2-2101, et seq. The format of the section numbers makes adding decimal numbers to parts impossible because the last number of the section sequence begins with the part.

Whenever adding a new part to an existing article, it is usually necessary to change every reference to "this article" or "this article __" in the existing article to "this part __" or to "parts __ to __ of this article __" unless the reference may correctly be applied to the new part as well as the remainder of the article. If a large number of these types of amendments is required, it is better to add a new article instead of a new part.

The amending clause for the addition of a new part should read as follows:

SECTION #. In Colorado Revised Statutes, **add** part 5 to article 4 of title 2 as follows:

A new article or part may be added and existing, conflicting law repealed when an existing law is materially amended or rearranged to accomplish the purpose of a bill, when all the law on a subject scattered throughout the statutes is brought under one statute, or when a sponsor wishes to repeal all the old law on a particular subject and enact an entirely new and usually simplified approach to the subject at hand. A good example of the use of this method was House Bill 1094 in 1965, the "Colorado Municipal Election Code of 1965", in which the existing laws on municipal elections were repealed and an entirely new code consisting of 176 sections was adopted. Also see Senate Bill 19-224, adopted in 2019, which repealed articles 11 and 12 of title 44 regulating medical and retail marijuana and enacted a new article 10 regulating all marijuana.

In using this method, both the sponsor and drafter should consider the fact that judicial and administrative interpretation of an old law may be lost in the creation of an entirely new statute on subject matter that has been on the books for many years. Also, **all** existing law and references to the subject matter covered by the new law should be checked carefully so that conflicting and duplicate laws and references to any laws repealed do not remain in the statutes. If existing law is to be repealed in a bill creating new law, a repeal clause should be included in the bill.

Additional examples of amending clauses adding new statutory material can be found in Appendix B.5 of this manual.

2.5.4.4 Repealing and Reenacting Existing Law

Joint Rule No. 21 of the Senate and House of Representatives specifies the format drafters are to use when amending existing law.

21. BILLS WHICH AMEND EXISTING LAW

(a) Bills which would amend existing law shall show the specific changes to be made to existing law in the following manner:

(1) All new material shall be capitalized.

(2) All material which is to be omitted from existing law shall be shown in its proper place in cancelled letter type; such material, however, shall not be deemed a part of the bill.

(3) The bill as printed shall show the following explanation at the bottom of the first page: 1) "Capital letters indicate new material to be added to existing statute;" 2) "Dashes through words indicate deletions from existing statute."

> The foregoing shall not apply to those bills or sections of bills which repeal or repeal and reenact existing law with amendments, if compliance is not feasible in the discretion of the Office of Legislative Legal Services.

Joint Rule No. 21 favors showing the reader new material in small caps and omitted material in strike type as a general rule. Accordingly, merging existing law and new law without distinguishing between new law and omitted law through the practice of "repealing and reenacting" existing material is not favored. This alternative format in which the bill sets forth only the text of the law as it would read after the bill became law without graphically distinguishing the text of new or existing law leaves the reader uncertain as to the relationship of new and existing law. Joint Rule No. 21, however, allows use of repeal and reenactment when the interests of better understanding the bill are served by its use.

Repealing and reenacting can be used to reorganize provisions within the larger whole. For example, sections can be reorganized within a part or article or subsections can be reorganized within a section. But the entire larger provision must be repealed and reenacted in order to do so. For example, to reorganize sections within a title, the entire title must be repealed and reenacted as was the case with HB 19-1172, adopted in 2019, which repealed and reenacted title 12 in its entirety with amended and relocated provisions.

The form of the amending clause for repealing and reenacting existing law should read as follows:

> **SECTION #.** In Colorado Revised Statutes, **repeal and reenact, with amendments,** 1-1-101 as follows:

See Appendix B.6 of this manual for additional examples of repeal and reenact amending clauses.

2.5.4.5 Repealing Existing Law

The general rule that the reader should see new material in small caps and repealed material in strike type requires a preference for showing the repeal of complete subdivisions of law such as articles, parts, sections, and subdivisions of sections in strike type as follows:

> **SECTION #.** In Colorado Revised Statutes, **repeal** 25-3.5-607 as follows:
>
> **25-3.5-607. Repeal of part.** ~~Unless continued by the general assembly, this part 6 is repealed, effective July 1, 1992.~~

or

> **SECTION #.** In Colorado Revised Statutes, 25-3.5-403, **repeal** (2) as follows:

> **25-3.5-403. Poison information center - state funding.** (2) ~~The general assembly each year in the general appropriation bill may require that an amount equal to the state appropriation for the poison information center be obtained from private fund-raising sources prior to the disbursement by the state treasurer of the legislative appropriation.~~

However, a "straight repealer" may be employed when the length of the repealed provision outweighs the benefits of seeing the provision in strike type. The form of a straight repeal is as follows:

> **SECTION #.** In Colorado Revised Statutes, **repeal** article 11 of title 26.

With a straight repeal, the text of the statutory provision does not appear in the bill in strike type.

When deleting entire subdivisions within an amendment to a larger body of material, it is generally preferable for historical purposes to retain the numbers or letters designating the deleted subdivisions instead of renumbering or relettering. Renumbering a section or subdivision can cause agency rules or forms and existing private contracts to have a broken citation, so the drafter should avoid renumbering or relettering without a good reason. Example:

Preferred:

> **SECTION #.** In Colorado Revised Statutes, 44-30-518, **amend** (1) and (4); and **repeal** (2) and (3) as follows:
>
> **44-30-518. Renewal of licenses.** (1) Subject to the power of the ~~commission~~ DIRECTOR to deny, revoke, or suspend licenses, any license in force shall be renewed by the ~~commission~~ DIRECTOR for the next succeeding license period upon proper application for renewal and payment of license fees and taxes as required by law and the rules of the ~~commission~~ DIRECTOR. The license period for a renewed license shall be the same period as the initial license period pursuant to section 44-30-501. In addition, the commission director shall reopen licensing hearings at any time at the request of the director, the Colorado bureau of investigation, or any law enforcement authority. The ~~commission~~ DIRECTOR shall act upon any application prior to the date of expiration of the current license.
>
> (2) ~~An application for renewal of a license may be filed with the commission up to one hundred twenty days prior to the expiration of the current license, and all license fees and taxes as required by law shall be paid to the commission on or before the date of expiration of the current license. The commission shall set the manner, time, and place at which an application is made.~~
>
> (3) ~~Upon renewal of any license, the commission shall issue an appropriate renewal certificate or validating device or sticker that shall be attached to each license.~~

(4) Renewal of a license may be denied by the ~~commission~~ DIRECTOR for any violation of article 20 of title 18 or this article 30, or the rules promulgated pursuant thereto, for any reason that would or could have prevented its original issuance, or for any good cause shown.

Alternative:

SECTION #. In Colorado Revised Statutes, **amend** 44-30-518 as follows:

44-30-518. Renewal of licenses. (1) Subject to the power of the ~~commission~~ DIRECTOR to deny, revoke, or suspend licenses, any license in force shall be renewed by the ~~commission~~ DIRECTOR for the next succeeding license period upon proper application for renewal and payment of license fees and taxes as required by law and the rules of the ~~commission~~ DIRECTOR. The license period for a renewed license shall be the same period as the initial license period pursuant to section 44-30-501. In addition, the ~~commission~~ DIRECTOR shall reopen licensing hearings at any time at the request of the director, the Colorado bureau of investigation, or any law enforcement authority. The ~~commission~~ DIRECTOR shall act upon any application prior to the date of expiration of the current license.

~~(2) An application for renewal of a license may be filed with the commission up to one hundred twenty days prior to the expiration of the current license, and all license fees and taxes as required by law shall be paid to the commission on or before the date of expiration of the current license. The commission shall set the manner, time, and place at which an application is made.~~

~~(3) Upon renewal of any license, the commission shall issue an appropriate renewal certificate or validating device or sticker that shall be attached to each license.~~

~~(4)~~ (2) Renewal of a license may be denied by the ~~commission~~ DIRECTOR for any violation of article 20 of title 18 or this article 30, or the rules promulgated pursuant thereto, for any reason that would or could have prevented its original issuance, or for any good cause shown.

The preceding alternative method should ordinarily be used only when recodifying a larger body of law, such as an entire article or part. At the very least, the entire section must be included in the bill to renumber subsections in this way.

Once a statute is repealed, the C.R.S. number is **never** reused unless the statute is "recreated and reenacted" as described below. This rule applies to articles, parts, and sections. It is unlikely that an entire title would ever be repealed. However, if a title were repealed, the title number could not be reused unless the title is recreated and reenacted. For information about recreating and reenacting, see section 2.5.4.7 of this chapter.

In repealing existing law, the drafter must take great care to repeal all the existing law on the subject and to eliminate from the law all references to the subject repealed. For instance, in the example of the amendment of section 44-30-518, above, which abolishes a commission, if in existing law there were references to the commission under an entirely different title of the statutes (for example, in article 75 of title 24 on state funds) or if there were references to the commission in title 26 or in the "Administrative Organization Act of 1968," these provisions also would need to be repealed or amended since the purpose of the bill was to abolish the commission. For further information, please see section 2.5.6 on "Conforming Amendments," below.

As noted in section 2.3., above, in the discussion of bill summaries, the substance of a repealed statute should be indicated in the bill summary if it is important to the bill.

Additional examples of amending clauses to repeal existing law can be found in Appendix B.4 of this manual.

2.5.4.5.1 General Repeals and Repeals by Implication

A general repealing clause, such as "All acts or parts of acts in conflict with this section are hereby repealed," should never be used. A general repealing clause does not give a bill any effect it would not otherwise have, and the Colorado Supreme Court held in *People ex rel. Wade v. Downen*, 106 Colo. 557, 561, 108 P.2d 224, 226 (1940):

> It would seem scarcely necessary to repeat the rule we have so often announced that repeals by implication are not favored, and that it is only where there is a manifest inconsistency or conflict between a later and earlier act, that a repeal by implication will be held to have occurred.

The drafter should consider whether the bill requires or makes desirable the repeal of existing law, and, if repeals are necessary, the existing law should be repealed in the relevant bill.

2.5.4.5.2 Future Repeals

The General Assembly frequently passes bills that provide for the repeal of an act, a provision contained in an act, or of other provisions in the statutes at a date later than the effective date of the act providing for the repeal. In cases of "future repeals," the repeal provision should be set forth in the statutes. For a future repeal of an article or part, the repeal is set forth in a separate section, and for a future repeal of a section or a subdivision of a section, the future repeal is, if possible, set forth as a separate portion of the section or subdivision. Thus, the future repeal of an existing section of law would be accomplished as follows:

SECTION #. In Colorado Revised Statutes, **amend** 33-3-603 as follows:

> **33-3-603. Permit - fee - repeal.** (1) A permit shall be issued for five dollars upon the applicant showing good cause that all requirements have been met.
>
> (2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2045.

Future repeals are used for several purposes, e.g., to require the department of regulatory agencies to review, pursuant to section 24-34-104, C.R.S., a regulatory entity prior to its repeal (a "sunset" review - see section 6.3 of this manual titled "Sunrise Laws"); to force the legislature itself to consider whether a statute ought to continue; or to repeal a statute that will become obsolete. Unless there is good reason not to do so, the drafter should include a future repeal for provisions of law that will become obsolete at a known point in the future, typically one year after the law becomes obsolete. Examples include one-time revenue transfers between funds, other specified actions that must be taken by a particular actor by a specific deadline, temporary task forces, and interim legislative committees created in statute for a specified period. A drafter may choose not to include a future repeal if the sponsor does not want one or if there is a particular need for the permanent statutes to reflect law that no longer has any effect.

Additional examples of future repeals can be found in Appendix B.4.2 of this manual.

2.5.4.5.3 Repealing Administrative Rules

Slight variations on the foregoing examples of repealing clauses are required for bills that repeal rules promulgated by the executive branch of government. Since executive agency rules are published in the Code of Colorado Regulations rather than as part of Colorado Revised Statutes, it is important to give as much information as necessary to identify clearly the rules to be repealed. The information should include the identity of the rule-making entity, the subject matter of the rules being repealed, and a correct citation to the Code of Colorado Regulations. Since there is no standardized numbering system used by executive agencies, it is important to identify the rule in exactly the same manner as designated by the agency, for example, "Regulation 11.d." or "Section IV (A)(7)". See Appendix H of this manual for examples of repealing and amending administrative rules.

The drafter should be familiar with section 24-4-103 (8)(d), C.R.S., which governs the General Assembly's authority to review administrative rules.

2.5.4.6 Recodification Showing Relocation of Provisions

Some bills simultaneously amend and reorganize entire titles, articles, or parts of Colorado Revised Statutes. Frequently, the major purpose of a recodification is to create a clearer and more logical statutory structure with less redundancy. Most of the changes tend to be of a minor, technical nature, such as renumbering provisions, correcting cross-references, deleting obsolete or repetitive language, and substituting gender-neutral language. A few very significant substantive changes may also be included.

When a recodificiaton bill is prepared in the form of a "repeal and reenactment," the resulting law is shown in all capital letters as new law, and it is difficult for the reader to find the significant, substantive changes. In this circumstance, the drafter may use an alternative format that shows amendments in the form of strike type and small caps and that identifies the source of relocated provisions. Examples of this alternative format may be found in Appendix L of this manual. This alternative format is recommended whenever it is practical and useful to show the changes made by a bill recodifying a title, article, or part of Colorado Revised Statutes.

When this alternative format is used, it is preferred that each relocated section is relocated in its entirety, but there may be instances that warrant dividing a section by relocating portions of a section, as demonstrated by chapter 183 from the 1993 Session Laws. If the drafter needs to divide a section into two or more sections, those portions requiring a different section number should normally be shown in strike type in the original section (including any subsections, paragraphs, etc.) and shown in capital letters in the new section. This is the preferred procedure for relocating provisions and allows for more concise and accurate publishing of the Colorado Revised Statutes and any comparative tables.

For examples of amending clauses that should be used in relocating provisions, see Appendix B.8 of this manual.

2.5.4.7 Recreating and Reenacting Former Law

Previously repealed provisions may be "recreated and reenacted", as follows:

> **SECTION #.** In Colorado Revised Statutes, **recreate and reenact, with amendments,** part 2 of article 5 of title 39 as follows:

The new material should be shown in the SMALL CAPITAL FONT STYLE.

New law should not be enacted by recreating and reenacting previously repealed material unless the subject matter of the new material is similar to the subject matter of the former material.

An example of a bill that recreated and reenacted an entire part is HB 16-1077, adopted in 2016, which recreated and reenacted the statutory revision committee in part 9 of article 3 of title 2, which had been repealed in 1985.

Additional recreate and reenact amending clauses can be found in Appendix B.7 of this manual.

2.5.5 Canned Language

The office has canned language for several types of provisions. Using this language will aid the drafter in producing better quality drafts, keep language in the statutes consistent, and save time. The drafter may modify the canned language when necessary.

The canned language may be added directly into the draft by using the canned language macro in Wordperfect. The easiest way to use it is by placing the cursor where you want the language and clicking the "CAN LAN" macro button on the top left of the Wordperfect toolbar. Then, select the appropriate provision and click the "Insert Language" button.

The "CAN LAN" macro button looks like this: 

If you are unfamiliar with a specific canned-language provision, the "CAN LAN" button can also bring up a document that provides a full explanation of each provision. Follow the instructions in the last paragraph, but click the "Full Explanation" button.

The office has developed canned language for the types of provisions listed below. Clicking the link below will bring up the full explanation of the provision:

- Adjusting for inflation
- Imposing criminal surcharges & using them to fund programs
- Fingerprint criminal history background check
- Authorizing gifts, grants, and donations for funding a bill
- Creating a grant or scholarship program
- Memorials for a deceased member
- Creating a cash fund
- Creating a crime
- Ballot provisions when creating an enterprise that collects $100 million over 5 years
- Creating an executive branch entity
- Creating a legislative branch entity
- Notifying the revisor of statutes when a provision takes effect or repeals upon an event
- Periodic reporting to the General Assembly
- Adding a nonstatutory short title to a bill
- Adding a statutory short title to a bill
- SMART Act reporting
- Qualifying for state education funds

- Sunset bills
- Creating a tax credit

If you would like more information, please feel free to contact the Canned Language Crew: Jery Payne, Pierce Lively, Chelsea Princell, Jessica Wigent, & Frank Stoner.

2.5.6 Conforming Amendments

In amending existing law, the drafter must take great care to amend **all** C.R.S. sections that are affected by the amendment to existing law. For example, when repealing a statutory section, it is necessary to amend all sections that refer to the section to be repealed. Similarly, when changing terminology, it is necessary to amend all sections that use the terminology to be amended.

When a section, part, or article is repealed, repealed and reenacted, relocated, or substantially amended, the drafter should always perform a computer search of the statutes to locate all other statutes that refer to the repealed, relocated, or amended material so that appropriate conforming amendments can be made. In addition, the drafter should perform other appropriate computer searches of the statutes to locate sections requiring conforming amendments, such as where a term is changed and the statutes must be amended wherever the old term is used.

When, in the judgment of the Director or the Revisor of Statutes, conforming amendments would be so numerous as to unduly burden or disrupt the legislative process, a section that allows the Revisor of Statutes to prepare conforming amendments may be added to the bill. See, for example, HB 12-1055, which contained the following language directing the Revisor of Statutes to make necessary conforming amendments:

> (#) **Change of name - direction to revisor - repeal.** (a) WITHIN THREE YEARS AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (16), THE REVISOR OF STATUTES SHALL CHANGE ALL REFERENCES TO THE DIVISION OF REGISTRATIONS AND THE DIRECTOR OF THE DIVISION OF REGISTRATIONS IN THIS PART 1 AND EVERYWHERE ELSE A REFERENCE IS CONTAINED IN THE COLORADO REVISED STATUTES TO THE DIVISION OF PROFESSIONS AND OCCUPATIONS AND THE DIRECTOR OF THE DIVISION OF PROFESSIONS AND OCCUPATIONS.

It is not always necessary or appropriate to make conforming amendments to statutes that no longer have any operative effect. For example, in a bill that changes the name of the "highway legislation review committee" to the "transportation legislation review committee", it may not be necessary to amend a provision that required the "highway legislation review committee" to report to the General Assembly by January 1, 1992, or to amend a provision that makes a statutory appropriation of money to the "highway legislation review committee" for the fiscal year beginning July 1, 1992.

2.5.7 Short Title or a Name of a Law in the C.R.S.

Sometimes the legislative bill sponsor wants to include a name for the particular law, such as the "Organic Certification Act" or "Katie's Law." This is called a "short title." The standard format for a short title is:

> **#-#-###. Short title.** The short title of this [C.R.S. subdivision] is the "__ Act".

2.6 Special Clauses

There are a number of special clauses that a drafter may include in bills depending upon the nature of the particular bill. The drafter should always place these various clauses in separate sections at the end of a bill. The following is an explanation of the special clauses drafters use most frequently, and the reasons for including or omitting them from particular bills.

The following statutory examples of special clauses are based on sections of the Colorado Revised Statutes but have been modified to reflect updated drafting practices. Therefore, there are some discrepancies between the following examples and existing statute.

2.6.1 Saving Clause - Grandfather Clause

Usually the provisions of a bill enacted into law become effective on the effective date of the new act. When a new act would affect existing rights, obligations, and procedures, a saving clause may be included to limit the application of the bill when enacted into law. The saving clause differs from the applicability clause, discussed below, in that the saving clause "saves" existing law while the applicability clause provides that new law will apply to certain events and transactions after a specified date.

Usually a drafter need not include a saving clause in a bill since a general saving clause, concerning penalties and liabilities, is included in section 2-4-303, C.R.S.:

> **2-4-303. Penalties and liabilities not released by repeal.** The repeal, revision, amendment, or consolidation of any statute or part of a statute or section or part of a section of any statute shall not have the effect to release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such statute, unless the repealing, revising, amending, or consolidating act so expressly provides, and such statute or part of a statute or section or part of a section of a statute so repealed, amended, or revised shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits,

> proceedings, and prosecutions, criminal as well as civil, for the enforcement of such penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions imposing, inflicting, or declaring such penalty, forfeiture, or liability.

If the general statutory saving clause quoted above is not adequate for purposes of a particular bill, the drafter should insert a specific clause. However, the drafter must use extreme care in the drafting of a specific saving clause to be certain of its actual effect and operation.

2.6.1.1 Examples of Specific Saving Clauses

The following are different examples of specific saving clauses:

> **4-7-703. Saving clause.** A document of title issued or a bailment that arises before September 1, 2006, and the rights, obligations, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this article 7 as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

> **13-22-230. Saving clause.** This part 2 does not affect an action or proceeding commenced or a right accrued before this part 2 takes effect. Except as otherwise provided in section 13-22-203, an arbitration agreement made before August 4, 2004, is governed by the "Uniform Arbitration Act of 1975".

> **24-75-915. Saving clause.** The repeal and reenactment of this part 9, effective July 1, 1986, does not affect the validity of any notes or any agreements in connection with the notes issued by the state treasurer pursuant to the authority contained in this part 9 prior to July 1, 1986.

2.6.1.2 Grandfather Clause

The "grandfather clause" is a special type of saving clause whereby persons lawfully engaged in a particular profession, occupation, or activity do not have to comply with certain provisions of a new licensing law. Former section 12-2-114 (1), C.R.S., concerning the licensing of accountants, is an example:

> **12-2-114. Existing certificates confirmed.** (1) An individual who, on or before August 1, 1959, holds a certified public accountant certificate previously issued under the laws of this state is not required to secure an additional certificate under this article 2 but is otherwise subject to this article 2. The

certificate previously issued is, for all purposes, considered a certificate issued under this article 2.

The example below in former section 12-8-109, C.R.S., was from a bill that repealed the state board of barbers and cosmetologists and placed the licensing function with the director of the division of registrations in the department of regulatory agencies. Former section 12-8-109 (1), C.R.S., addressed the validity of the rules adopted by the predecessor board, and section 12-8-109 (2), C.R.S., addressed the validity of a license issued by the predecessor board:

> **12-8-109. Rules and orders adopted by the state board of barbers and cosmetologists under previous law - persons licensed or registered under previous law.** (1) All rules, rates, orders, and awards of the state board of barbers and cosmetologists lawfully adopted prior to July 1, 2000, continue to be effective until revised, amended, repealed, or nullified pursuant to law.
>
> (2) All licenses issued by the state board of barbers and cosmetologists to practice barbering or cosmetology prior to July 1, 2000, remain valid and are subject to renewal by the director pursuant to section 12-8-115.

In reenactments of the income tax law and the general property tax law adopted in 1964, two very inclusive saving clauses were included. The first quoted below is from the income tax law, and the second quoted below is from the general property tax law:

> **39-22-624. Prior rights and liabilities not affected.** Nothing in this article 22 affects any right, duty, or liability arising under statutes in effect immediately prior to January 1, 1965. The right, duty, or liability is continued and concluded under the prior statutes. Nothing in this article 22 revives or reinstates any right or liability previously barred by statute.

> **39-1-117. Prior actions not affected.** Nothing in articles 1 to 13 of this title 39 applies to or affects any valuation, assessment, allocation, levy, tax certificate, tax warrant, tax sale, tax deed, right, claim, demand, lien, indictment, information, warrant, prosecution, defense, trial, cause of action, motion, appeal, judgment, sentence, or other authorized act, done or to be done, or proceeding arising pursuant to the laws in effect immediately prior to August 1, 1964, which are governed by and conducted pursuant to the provisions of law in effect immediately prior to August 1, 1964.

Although the example in this section is broad, the drafter probably should be careful about using a list followed by a catchall phrase because a court will apply ejusdem generis.

A saving clause can also "save" existing law from implied repeal. If a bill is to be supplementary to an existing law, and is not intended impliedly to repeal any existing law, the drafter may wish to insert a clause such as that in the "Colorado Water Quality Control Act":

> **25-8-612. Remedies cumulative.** (1) It is the purpose of this article 8 to provide additional and cumulative remedies to prevent, control, and abate water pollution and protect water quality.
>
> (2) No action pursuant to section 25-8-609 bars enforcement of this article 8 or of any rule or order issued pursuant to this article 8 by any authorized means.
>
> (3) Nothing in this article 8 abridges or alters rights of action or remedies existing on or after July 1, 1981, nor does this article 8 or anything done by virtue of this article 8 estop individuals, cities, towns, counties, cities and counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances.

2.6.1.3 General Saving Clauses

Instead of any of the more specific saving clauses above, the following general saving clauses may suffice:

> The remedies provided for in sections __ and __ are cumulative, and no action taken by the state constitutes an election by the state to pursue any remedy to the exclusion of any other remedy for which provision is made in this article __.
>
> This article __ is intended to be in addition and supplementary to other laws of this state, and does not repeal any of sections __ and __.

A drafter should draft a saving clause in a C.R.S. section since they are part of the permanent law and should be located conveniently with the permanent law.

2.6.2 Severability Clause - Nonseverability Clause

If a court holds any part of an act unconstitutional, a severability clause ensures that the remainder of the act will not be affected. A severability clause is a type of saving clause in that it saves parts of an act if a court declares any other parts of the act unconstitutional.

There is a general severability clause in article 4 of title 2, that applies to all statutes:

> **2-4-204. Severability of statutory provisions.** If any provision of a statute is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the statute are valid, unless it appears to the court that the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court determines that the valid provisions, standing alone, are

> incomplete and are incapable of being executed in accordance with the legislative intent.

It would seem that the above general severability clause would be adequate since it applies to all statutes. Nonetheless, the Colorado Supreme Court has given some weight to the inclusion of a severability clause in specific statutes. See *In re Questions of the Governor*, 55 Colo. 17, 123 P. 660 (1912); *Mountain States Telephone and Telegraph Co. v. Animas Mosquito Control District*, 152 Colo. 73, 380 P.2d 560 (1963). Thus, a drafter may sometimes include a severability clause in a bill, especially in long or controversial bills or when a member specifically requests its inclusion in a bill. A drafter should not use a severability clause indiscriminately, however, since it serves no particular purpose in most bills.

If the drafter determines that a severability clause is necessary, the drafter should use the example below, adapted from the severability clause in uniform laws:

> **#-#-###. Severability.** If any provision of [this act] or the application of [this act] to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of [the act] that can be given effect without the invalid provision or application, and to this end the provisions of [this act] are declared to be severable.

In some cases the General Assembly may request a nonseverability clause. This clause declares that the General Assembly would not have enacted the bill without all the provisions in it; therefore, if any provision is held to be invalid, the entire act is invalid. The following is an example of a nonseverability clause:

> **#-#-###. Nonseverability.** If any provision of this article 8 is held invalid, this article 8 is invalidated in its entirety, and to this end the provisions of this article 8 are declared to be nonseverable.

2.6.3 Effective Date Clause

Since 1951, the following provision of article V of the state constitution has specifically addressed effective dates of acts, although other provisions of the constitution may also have a bearing on effective dates.

> **Section 19. When laws take effect - introduction of bills.** An act of the general assembly shall take effect on the date stated in the act, or, if no date is stated in the act, then on its passage....

2.6.3.1 Bills That Include a Safety Clause

Many bills do not specify a date when they become effective. Every bill that has a safety clause but no effective date takes effect "on its passage". The date of "passage" is determined by section 11 of article IV of the state constitution, which requires that every bill passed by the General Assembly be presented to the governor for approval or veto. Under this section, a bill becomes law when signed by the governor, when the governor fails to act on the bill within the time allowed, or when the General Assembly overrides the governor's veto.

In most cases, the date of "passage" is the date of the governor's signature. If the governor vetoes a bill and the General Assembly overrides the veto, the date of passage is the date when the second house passes the veto override motion. If the governor does not sign or veto the bill, the date of passage is the day following the date when the period for governor action expires. The governor may sign or veto a bill on any day during the ten-day period after it is presented to the governor; except that, if the General Assembly adjourns during the ten-day period before the governor acts on the bill, then the governor may sign or veto the bill on any day during the thirty-day period following adjournment.

As a general rule, if a bill has an effective date clause but the Governor signs the bill after the specified effective date, the bill takes effect as of the date that the Governor signed the bill. In *People v. Glenn, Jr.*, 200 Colo. 416, 420, 615 P.2d 700, 703 (1980), the Colorado Supreme Court held as follows:

> When a bill repealing a criminal statute is signed into law after the bill's stated effective date, the directive contained in Art. IV, Sec. 11, to the effect that the bill does not "become a law" until it is signed by the Governor, takes precedence over the directive contained in Art. V, Sec. 19, to the effect that a legislative act "shall take effect on the date stated in the act".

Typically, an editor's note will be added to the C.R.S. during publication of the statutes that explains that the governor signed the bill after the effective date specified in the bill.

2.6.3.2 Bills That Do Not Include a Safety Clause

Under section 1 of article V of the state constitution, if a bill does not include a safety clause, it is subject to the citizens' referendum power. In this case, the earliest the bill can take effect is ninety days after adjournment of the legislative session in which the General Assembly passed the bill. See *In re Interrogatories*, 66 Colo. 319, 181 P. 197 (1919). For a more detailed explanation of the safety clause and the referendum power, see section 2.6.5 of this chapter.

Thus, if a bill does not include a safety clause, it must include a clause that specifies an effective date that is no sooner than ninety days after the session adjourns; the bill sponsor may choose to

specify an effective date that is later than the ninetieth day. The standard ninety-day effective date clause reads as follows:

> **SECTION #. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November (*year inserted by macro*) and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

2.6.3.3 Specifying an Effective Date

The drafter should determine from the sponsor the date when the sponsor wants the bill to take effect, and the drafter should be prepared to discuss with the sponsor reasons why the bill should take effect at a particular time. Some bills can go into effect immediately without undue inconvenience to anyone, and the sponsor may want the bill to take effect at the earliest possible date. These bills need not contain an effective date section, and they will take effect on "passage" so long as they have a safety clause. If the bill sponsor wants an early effective date and therefore a safety clause to achieve the early effective date, the drafter should discuss with the bill sponsor whether the bill meets the requirements of the safety clause as described in section 1 (3) of article V of the state constitution, as necessary for the "immediate preservation of the public peace, health, or safety....".

Bills that regulate a new profession, impose a new duty, or need time for a local government or state agency to implement, may need an effective date that provides an interval between the passage date and effective date of a bill allows state agencies, local governments, the courts, and individuals to be informed of the new law or the changes to existing law that affect them, and, during this interval, these entities have time to make the necessary adjustments to comply with the new law.

Bills that affect state government and involve the appropriation or expenditure of state money generally should have an effective date of July 1, which marks the beginning of the state's fiscal year. Sometimes a date other than July 1 should be used. For certain tax bills, the sponsor may want to have the procedural or other changes go into effect as soon as possible.

Bills that extend or remove a future repeal date should have an effective date earlier than the date of the future repeal. An effective date later than the date of the future repeal would cause the future repeal provision to take effect before the bill takes effect and repeal the provision, resulting in the need to recreate the repealed provision.

The drafter should place the effective date clause near the end of the bill after any repeals or appropriations and before the safety clause, if one is included. A specified effective date in a bill that includes a safety clause can be simply stated as follows:

> **SECTION #. Effective date.** This act takes effect July 1, 2019.

A specified effective date in a bill that does not include a safety clause is combined with the Act subject to petition clause and can be stated as follows:

> **SECTION #. Act subject to petition - effective date.** This act takes effect September 1, 2024; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Some circumstances require variations in effective date sections. For example: In some circumstances, certain sections of a bill should take effect at one time and other sections at another time; increases in certain elected officials' compensation cannot apply during the sitting officials' terms of office; or a new reapportionment act can apply only to subsequent General Assemblies. Examples of effective date clauses with multiple dates that would apply in these situations, both for bills that include safety clauses and those that do not, appear in Appendix K of this manual.

Similarly, a bill or a section of a bill may be contingent upon passage of another bill. A bill or portions of a bill may take effect only if another bill passes or may not take effect if another bill passes. Also, whether a bill takes effect may be conditional upon whether another bill passes with a certain estimated level of cost savings. Below is an example of an contingent effective date combined with an Act subject to petition clause. Additional examples of contingent effective date clauses, both for bills that include safety clauses and those that do not, appear in Appendix K of this manual.

> **SECTION #. Act subject to petition - effective date.** (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) Section 11 of this act takes effect only if House Bill 24-1034 does not become law.

(3) Section 12 of this act takes effect only if House Bill 24-1034 becomes effective, in which case Section 12 takes effect on the effective date of House Bill 24-1034 or on the applicable effective date of this House Bill 24-1355, whichever is later.

(4) Section 16-8.5-116 (1)(b) as enacted in Section 13 of this act takes effect only if House Bill 24-1034 does not become law.

If a bill takes effect, or a portion of a bill has an automatic repeal provision that takes effect, on a date that is after the beginning of the next regular session, the drafter should specify the effective date or the date of repeal in the statutory text. Specifying these dates in statute provides more effective public notice that the section has a delayed effective date or repeal. This practice also allows the General Assembly to amend the provision subsequently to further delay its effective date or repeal without having to amend an effective date clause or a repeal clause in the act as printed in the session laws. In most cases, the drafter can easily specify the effective date or repeal date by adding an additional subsection or paragraph in the statutory text indicating, for example, "This section is effective July 1, 2020", or "This section is repealed, effective July 1, 2020".

Under some circumstances, an act should take effect upon the occurrence of a particular event or condition rather than on a date certain. For example, the state income tax form accommodated only fifteen lines of income tax check-offs for voluntary contributions to charitable organizations. In 2010, the General Assembly enacted part 38 of article 22 of title 39, C.R.S., creating the unwanted horse fund voluntary contribution as the sixteenth income tax check-off authorized in statute. To accommodate the limitations of the income tax form, the General Assembly specified in section 39-22-3802 (2), C.R.S., that the unwanted horse fund voluntary contribution would take effect as follows:

39-22-3802. Voluntary contribution designation - procedure - effective date. (2) This part 38 takes effect on September 1 of the year in which the executive director of the department of revenue files a written certification with the revisor of statutes that there are no more than fourteen other lines on the Colorado state individual income tax return form for voluntary contributions for the state income tax year commencing in January of the following year.

Drafters are discouraged from making an act effective upon the occurrence of some event or condition unless absolutely necessary, because the reader of the statutes is unable to determine from the statutes alone whether the act is in effect. When it is necessary to make an act effective upon the occurrence of an event or condition, the drafter should clearly and objectively describe the event or condition so that there is no room for argument about whether the qualifying event or condition has occurred. For example, the following provision is excessively

subjective: "This act takes effect when caseload studies indicate its provisions would be beneficial."

If a contingent effective date provision is necessary, the drafter should identify an objective event or condition that will clearly trigger the effectiveness of the bill. For example: "This act takes effect when the number of pupils enrolled statewide under the early childhood development program, as determined by the commissioner of education, exceeds two thousand." In addition, the drafter should include language directing a person or entity to notify the revisor of statutes in writing when the event occurs or the condition is met, such as the event in section 39-22-3802 (2), C.R.S., above, so that the Office can clarify the effective date of the statute in an editor's note. Drafters should refer to the canned language in section 2.5.5 of this chapter when drafting statutory provisions requiring a notice to the revisor of statutes.

The drafter should be very cautious about making provisions effective on June 30 or December 31, especially in the case of repeals. In general, when an act passes with a specified effective date, the act will be construed to take effect at 12:01 a.m. on that date. For example, if an act repeals a body of law on June 30, then the act may be construed to repeal the law at 12:01 a.m. on June 30. If the act further provides that a new body of law on the same subject is to take effect on July 1, the drafter may have inadvertently left a one-day gap when no body of law on that subject is in effect.

2.6.4 Applicability Clause

A variation on the effective date clause and the saving clause is the applicability clause, which specifies that the new statutory material, although effective on the effective date of the act, will apply to certain events or transactions. A drafter should add an applicability section to any bill that regulates conduct or affects contracts or contractual relationships. The following are some common applicability sections:

> **SECTION #. Effective date - applicability.** This act takes effect July 1, 2024, and applies to offenses committed on or after said date.
>
> **SECTION #. Applicability.** This act applies to fiscal years beginning on or after July 1, 2024.
>
> **SECTION #. Effective date - applicability.** This act takes effect July 1, 2024, and applies to causes of action filed on or after said date.
>
> **SECTION #. Effective date - applicability.** This act takes effect July 1, 2024, and applies to civil actions pending on said date and to civil actions commenced after said date.

The word "action" in applicability clauses without any modifying language like "civil action" or "cause of action" has led to litigation as to what types of proceedings the term applies. When drafting applicability clauses for bills relating to civil matters, drafters are advised to use the term "civil action" rather than "action". Drafters might want to consider the case of *In re Marriage of Plank*, 881 P.2d 486 (Colo. App. 1994).

Amendments to the income tax or property tax laws should usually include an applicability clause in a numbered C.R.S. section to the effect that "This section [subsection, paragraph, etc.], as amended, applies only with respect to taxable years beginning after December 31, 20__". The reason is that the prior statutory provision must continue to govern taxable years prior to the specified date, and may govern filing of amended returns for such years or determination of penalties or refunds.

Drafters also should use applicability clauses in criminal laws and other acts concerning contracts, contractual relationships, or court proceedings. See, e.g., section 15-17-101, C.R.S., in the "Colorado Probate Code", and section 18-1-103, C.R.S., in the "Colorado Criminal Code". When amending a statute that is governed by a previously enacted applicability section with a C.R.S. number, it is important to remember to conform the applicability section to the desired effective date. For examples of applicability clauses, refer to Appendix K.1.6 of this manual.

2.6.5 Safety Clause[2]

2.6.5.1 Background

Until 1997, the practice of the Office was to automatically put a safety clause on every bill unless a member directed us otherwise. In 1997, the Executive Committee directed our Office to ask each member whether or not the member wants to include a safety clause on each bill. That policy has been reaffirmed by subsequent Executive Committees. Copies of the Executive Committee memorandum and the Office's memorandum concerning the Executive Committee's directive can be found in Appendix F.2 of this manual. A bill that does not have a safety clause is subject to referendum. The safety clause originates in the initiative and referendum provisions of the state constitution. Section 1 (3) of article V of the state constitution provides as follows:

> (3) The second power hereby reserved is the referendum, and it may be ordered, **except as to laws necessary for the immediate preservation of the public peace, health, or safety, and appropriations for the support and maintenance of the departments of state and state institutions**, against any act or item, section, or part of any act of the general assembly, either by a petition signed by registered electors in an amount equal to at least five percent of the

[2] For information on effective date and applicability clauses, see sections 2.6.3 Effective Date Clause and 2.6.4 Applicability Clause of this chapter.

> total number of votes cast for the office of the secretary of state at the previous general election or by the general assembly. Referendum petitions, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly that passed the bill on which the referendum is demanded. The filing of a referendum petition against any item, section, or part of any act shall not delay the remainder of the act from becoming operative. **[Emphasis added.]**

When discussing the use of a safety clause with a member as directed in the Executive Committee memorandum, the drafter should inform the member that a Colorado Supreme Court decision indicates that bills without a safety clause cannot take effect prior to the expiration of the ninety-day period following adjournment of the General Assembly, which is the period for filing referendum petitions against such bills. In view of the ninety-day requirement for bills without a safety clause, the drafter should be aware of and inform the member that the member's bill may need to take effect on July 1 or before the expiration of the ninety-day period following adjournment. These bills could include those that require an immediate change in the law or bills that relate to fiscal or tax policy that are intended to apply to either the current fiscal year or to the entire upcoming fiscal year. If a member directs the drafter to prepare a bill without a safety clause, the drafter should use a petition clause that indicates the act is subject to petition and explains the alternate effective date.

2.6.5.2 Points of Importance Regarding the Safety Clause

1. An act with a safety clause cannot be referred to the people by petition. Another way of saying this is that a bill with a safety clause is not subject to the citizen's right to file a referendum petition against all or any part of the bill.[3]

2. The General Assembly can refer an act or part of an act to the people by the simple procedure of substituting a referendum clause in place of the safety clause. The bill then becomes what is often termed a "referred bill".

3. The procedure by which the people can refer an act or part of an act of the General Assembly that does not include a safety clause to themselves by petition is often termed a "recision referendum" or an "initiated referendum". The only two times acts of the General Assembly have been referred to the people by petition of the people were in 1932 when an increase in the tax on oleomargarine was referred and in 2019/2020 when an act concerning the adoption of an agreement among the states to elect the president of the United States by national popular vote was referred.

[3] The right to file a referendum petition is established in section 1 (3) of article V of the Colorado constitution.

4. Colorado court decisions have held that the legislature is vested with the exclusive power to decide the appropriateness of using the safety clause. The question of including the safety clause in legislation is a matter of debate in the legislative process and the body's decision cannot be reviewed or called into question by the courts.

5. Certain acts are not referable either by petition of the people or by an act of the General Assembly even if they do not have a safety clause. These are appropriation acts for the support and maintenance of the departments of state and state institutions.

6. Acts without a safety clause cannot go into effect until the expiration of the ninety-day period after adjournment of the session of the General Assembly that passed the act. See *In re Interrogatories*, 66 Colo. 319, 181 P. 197 (1919).

7. If a bill must go into effect immediately or at any other time prior to the expiration of the ninety-day period after adjournment, the drafter must include a safety clause in the bill.

8. The initiative and referendum provisions of the state constitution state that, "The veto power of the governor shall not extend to measures initiated by or referred to the people." Accordingly, bills referred to the people by the General Assembly have not, as a matter of practice, been sent to the governor. This is an exception to section 11 of article IV under which the governor has specified times within which the governor must approve or veto a bill—ten days when the General Assembly is in session and thirty days after adjournment of the session. However, bills that have been enacted without a safety clause are delivered to the governor for the governor's consideration.

9. The drafter should consult with senior drafters whenever a situation arises that does not appear to be covered by these guidelines.

2.6.5.3 Bills with a Safety Clause

If a bill has a safety clause, it is always the final section of the bill. The following are examples of safety clause provisions.

2.6.5.3.1 Safety Clause - No Effective Date Specified

If a member wants a bill to take effect as soon as possible or at an early date—before the expiration of the ninety-day period following the adjournment of the session—and the member accepts the fact that a safety clause is necessary, then the drafter should add a safety clause to the bill. The bill will take effect when the governor signs it, when it becomes law without the governor's signature, or when it is adopted over a veto.

The safety clause that evolved from section 1 (3) of article V of the state constitution reads as follows:

> **SECTION #. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.

2.6.5.3.2 Safety Clause - with Specified Effective Date

If a bill is to take effect on a specified date, include an effective date clause before the safety clause. An effective date clause specifies the predetermined date for the bill to take effect following its passage. For example:

> **SECTION #. Effective date.** This act takes effect __.
>
> **SECTION #. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety or for appropriations for the support and maintenance of the departments of the state and state institutions.

2.6.5.3.3 Safety Clause - with Specified Effective Date - with Applicability

A bill may also need an applicability clause and an effective date clause. For example:

> **SECTION #. Effective date - applicability.** This act takes effect __, and applies to __ on or after said date.
>
> **SECTION #. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.

Drafters should familiarize themselves with the Office memo on Safety Clauses and Act-Subject-to-Petition Clauses and the additional samples of effective-date clauses in Appendix K of this manual.

2.6.5.3.4 Safety Clause - with Applicability

A bill can also have a safety clause, no specified effective date clause, and an applicability clause. For example:

> **SECTION #. Applicability.** This act applies to __ on or after the effective date of this act.
>
> **SECTION #. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation

of the public peace, health, and safety or for appropriations for the support and maintenance of the departments of the state and state institutions.

2.6.5.4 Bills Without a Safety Clause - Act-Subject-to-Petition Clause

The following examples of act-subject-to-petition clauses have been developed to address different circumstances. If a bill does not have a safety clause and it is intended that the bill take effect at the **earliest possible date**, then the drafter should add a general petition clause, or no safety clause, at the end of the bill in place of the safety clause. A drafter can use the following examples to fit the circumstances presented by most bills. There are more examples of act-subject-to-petition clauses in Appendix D.2 of the Drafting Manual. There are other situations that may arise such as when different sections of a bill are to take effect at different times. Since it is not possible here to describe every situation, the drafter should consult with senior drafters whenever a situation arises that does not appear to be covered by these guidelines.

2.6.5.4.1 Act-Subject-to-Petition Clause - No Effective Date Specified

If no effective date is specified, a bill without a safety clause will take effect on the day following the expiration of the ninety-day period after adjournment of the session. But the bill will not take effect on that date if a petition is actually filed. In such a case, the bill can only take effect when approved by the people at a general election and when the vote is declared by proclamation of the governor, as required by subsection (4) of section 1 of article V of the state constitution. The governor usually acts in late December or early January following the election.

> **SECTION #. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November, (*year inserted by macro*), and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

2.6.5.4.2 Use Care When Selecting an Act-Subject-to-Petition Clause to Avoid a Problem with the Effective Date

When selecting an act-subject-to-petition clause, the drafter needs to think carefully about whether using the petition clause will work for the bill. Specifically, the drafter and the editors and revisors working on the bill prior to introduction need to thoughtfully consider whether anything in the bill needs to take effect before the applicable 90-day period, and would therefore not take effect if the bill had a petition clause. For example, a sunset bill might extend the

scheduled repeal date of an article in the C.R.S. from July 1, 2016, to September 1, 2026. If the drafter were to use a petition clause, then the article in the bill would actually repeal on July 1, 2016, pursuant to the statute before the 90-day period would run out on August 10, 2016. In this instance, the petition clause will not work because the provision will repeal before the change to that provision takes effect and the bill would have a significant flaw.

When reviewing amendments to introduced bills, drafters and the OLLS Publications Team should check for potential problems or conflicts that might result between any effective date of the contents of the bill and the effective date stated in the petition clause if a petition clause is substituted for a safety clause. Check the entire bill for repeals occurring prior to the 90-day period for turning in a petition, and check for any provision in the bill taking effect after the 90-day period but before the governor would declare the vote by proclamation in the year that the referendum would appear on the ballot if a petition were filed. If the drafter finds this occurring in a bill, the bill should have a safety clause. Examples of act-subject-to-petition clauses appear in Appendix K.2 of this manual.

2.6.5.4.3 Act-Subject-to-Petition Clause - No Effective Date - with Applicability

If the bill does not have a safety clause and the bill requires the use of an applicability provision, the drafter may include an applicability provision with the appropriate effective date clause. For example:

> **SECTION #. Act subject to petition - effective date - applicability.** (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November,(*year inserted by macro*), and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.
>
> (2) This act applies to __ on or after the applicable effective date of this act.

2.6.5.4.4 Act-Subject-to-Petition Clause - with Effective Date Specified

If a bill does not have a safety clause and it is intended that the bill take effect on a specified *date* ***subsequent*** to the expiration of the ninety-day period following adjournment, then the the drafter should use the following clause to assure that no ambiguity is created if a petition is actually filed against the bill. The clause indicates that if a petition is filed, the measure will take effect on the specified date or the date of the proclamation, whichever is later. For example:

> **SECTION #. Act subject to petition - effective date.** This act takes effect __ (insert a fixed date); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November (*year inserted by macro*) and, in such case, will take effect on __ (insert a fixed date), or on the date of the official declaration of the vote thereon by the governor, whichever is later.

If a referendum petition is filed within the ninety-day period, the bill would be submitted to the people at the next general election. General elections are held in November of even-numbered years. Bills approved at such an election take effect from and after the date of the governor's proclamation of the vote as required by subsection (4) of section 1 of article V of the state constitution. The proclamation is issued in late December of the election year or early January of the following year.

If the specified effective date is before the date of the next general election and the date of the governor's proclamation of the vote and a petition is filed, the bill will not take effect on the specified date. Instead, if it is approved by the voters, it will take effect on the date that the governor proclaims the vote.

If the specified effective date is after the next general election and the date of the governor's proclamation of the vote and a petition is filed, the bill will take effect on the specified date if it is approved by the voters and the vote is proclaimed prior to the specified date.

2.6.5.4.5 Act Subject to Petition Clause - with Effective Date - with Applicability

A bill may also need an effective date clause and applicability clause. For example:

> **SECTION #. Act subject to petition - effective date - applicability.** (1) This act takes effect __ (insert a fixed date); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November (year inserted by macro) and, in such case, will take effect on __ (insert a fixed date), or on the date of the official declaration of the vote thereon by the governor, whichever is later.
>
> (2) This act applies to __ (insert actions - e.g., "offenses committed") on or after the applicable effective date of this act.

2.6.6 Referendum Clause

2.6.6.1 Non-TABOR Referendum

Under section 1 (3) of article V of the state constitution, as previously discussed, the General Assembly may refer an act or part of an act to the people for their approval or rejection if the General Assembly so desires. If so referred, the measure is voted upon at the next biennial regular general election. If a sponsor wishes to refer a bill to the people, the drafter should insert, in lieu of the safety clause, a referendum clause as follows:

2.6.6.1.1 Referendum Clause - No Effective Date - No Applicability

> **SECTION #. Refer to people under referendum.** At the election held on November (insert date & year), the secretary of state shall submit this act by its ballot title to the registered electors of the state for their approval or rejection. Each elector voting at the election may cast a vote either "Yes/For" or "No/Against" on the following ballot title: "Shall [insert language here]?" Except as otherwise provided in section 1-40-123, Colorado Revised Statutes, if a majority of the electors voting on the ballot title vote "Yes/For", then the act will become part of the Colorado Revised Statutes.

To determine the appropriate date to insert into the clause, the drafter should apply the rule in section 1-4-201, C.R.S., which requires a general election to be held "on the first Tuesday succeeding the first Monday of November in every even-numbered year."

When drafting the title to be inserted in the referendum clause, a drafter should be mindful of the requirement in section 1-40-106 (3)(d), C.R.S., which establishes standards for properly referring to a proposition or an amendment.

2.6.6.1.2 Referendum Clause - with Effective Date - with Applicability

Because a bill cannot become effective until it is approved at the next general election, a drafter should not specify an effective date or applicability date earlier than the date that the governor is likely to proclaim the results following the election (usually by late December or early January following the November election).

> **SECTION #. Effective date - applicability.** This act takes effect __ and applies to __ on or after said date.
>
> **SECTION #. Refer to people under referendum.** At the election held on November (insert date & year), the secretary of state shall submit this act by its ballot title to the registered electors of the state for their approval or rejection. Each elector voting at the election may cast a vote either "Yes/For" or "No/Against" on the following ballot title: "Shall (insert language here)?" Except as

otherwise provided in section 1-40-123, Colorado Revised Statutes, if a majority of the electors voting on the ballot title vote "Yes/For", then the act will become part of the Colorado Revised Statutes.

2.6.6.2 TABOR Referendum Clause

The drafter should use the same base referendum clause if the bill involves matters arising under section 20 of article X of the state constitution (TABOR). But there are two important differences. First, the clause may be referred to the voters at the general election or an odd-numbered year election. If it is an odd-numbered year, under section 20 (3)(a), these elections take place "on the first Tuesday in November . . ." Second, in some situations TABOR may require the ballot title to begin with certain language such as "Shall state taxes be increased ..." A drafter should consult section 9.5 and Appendix A.1.13 and A.1.14 and of this manual for more information about this language.

2.6.6.2.1 TABOR Referendum Clause - No Effective Date - No Applicability

SECTION #. Refer to people under referendum. At the election held on November 3, 2015, the secretary of state shall submit this act by its ballot title to the registered electors of the state for their approval or rejection. Each elector voting at the election may cast a vote either "Yes/For" or "No/Against" on the following ballot title: "Shall state taxes be increased $192,260,000 annually by a change to the Colorado Revised Statutes raising the state sales and use tax rate by 0.1%?" Except as otherwise provided in section 1-40-123, Colorado Revised Statutes, if a majority of the electors voting on the ballot title vote "Yes/For", then the act will become part of the Colorado Revised Statutes.

2.6.7 Penalty Clauses and How to Draft Criminal Laws

2.6.7.1 Components to Include When Creating a New Crime

When drafting a criminal law, the drafter needs to define the elements of the crime, establish the penalty for the crime, address any affirmative defenses, exceptions, and immunity provisions and define any necessary terms. For examples of the components to include when creating a new crime, see section 2.6.7.1 of this chapter.

2.6.7.1.1 Elements of the Crime and Culpable Mental State

When drafting a criminal law, the drafter needs to describe the prohibited conduct as a clear series of elements that a prosecutor must prove in order to convict a defendant. The elements take one of three forms: conduct, result, or attendant circumstance. The elements of the offense must describe the conduct, either an act or an omission, necessary to commit the crime. The

elements may also include a result, like bodily injury. Finally, an element can include a fact (attendant circumstance) that the criminal offense requires, like using a deadly weapon during the offense.

The crime also needs to specify the mental state. Both statute and case law make it clear that even if a mental state is not stated in the offense, one may still be required to commit the offense. In that case, a court may apply a mental state. *See* section 18-1-503, C.R.S., and *People v. Moore*, 674 P.2d 354 (Colo. 1984). Usually a court will apply a reckless intent when no mental state is specified. So, it is best to include a mental state rather than leaving it up to judicial interpretation. In Colorado, mental state refers to a person acting intentionally or with intent; knowingly or willfully; recklessly; or with criminal negligence. *See* Section 18-1-501 (4), C.R.S. Use only these defined mental states. These terms are defined in section 18-1-501, C.R.S., as follows (Note that the statutory definitions have not been modified for gender neutrality):

- "Intentionally" or "with intent". All offenses defined in this code in which the mental culpability requirement is expressed as "intentionally" or "with intent" are declared to be specific intent offenses. A person acts "intentionally" or "with intent" when his conscious objective is to cause the specific result proscribed by the statute defining the offense. It is immaterial to the issue of specific intent whether or not the result actually occurred.

- "Knowingly" or "willfully". All offenses defined in this code in which the mental culpability requirement is expressed as "knowingly" or "willfully" are declared to be general intent crimes. A person acts "knowingly" or "willfully" with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists. A person acts "knowingly" or "willfully", with respect to a result of his conduct, when he is aware that his conduct is practically certain to cause the result.

- "Recklessly". A person acts recklessly when he consciously disregards a substantial and unjustifiable risk that a result will occur or that a circumstance exists.

- "Criminal negligence". A person acts with criminal negligence when, through a gross deviation from the standard of care that a reasonable person would exercise, he fails to perceive a substantial and unjustifiable risk that a result will occur or that a circumstance exists.

The one exception to using a mental state is when the member intends for the crime to be a strict liability crime. In that case, a mental state is not necessary to commit the crime. To ensure that the member's intent to create a strict liability crime is respected and a mental state is not applied by a court , the crime needs to specifically state that it is a strict liability crime.

When drafting, only refer to one mental state. The mental states differ in levels of culpability; the lowest level is criminal negligence, next is recklessness, then there is knowingly, and finally

intentional is the highest level of culpability. So if the member wants the mental state to be recklessly, the drafter does not need to include recklessly, knowingly, and intentionally, the drafter needs to include only the lowest mental state. When a crime calls for a lower level of mental state, the mental state can be satisfied by a higher mental state. That means, if the crime only requires criminal negligence and the person acted recklessly, knowingly, or intentionally, the criminal negligence is still satisfied. So, if the member wants the mental state to be recklessness, the drafter need not also include knowingly and intentional since both are higher mental states.

2.6.7.1.2 Penalties of the Crime

The drafter needs to specify the level of offense for the crime, such as class 1-6 felony, level 1-4 drug felony, class 1 & 2 misdemeanor, level 1 & 2 drug misdemeanor, petty offense, or civil infraction. In addition, the drafter should include any penalty enhancement and aggravating factors. See section 18-1.3-401, C.R.S., for felony penalties; section 18-1.3-401.5 C.R.S., for drug felonies, section 18-1.3-501, C.R.S., for misdemeanor and drug misdemeanor penalties, section 18-1.3-503 C.R.S., for petty offense and civil infraction penalties.

Examples:

(1) Murder in the first degree is a class 1 felony.

or

(2) (a) Murder in the second degree is a class 2 felony.

(b) Notwithstanding subsection (3)(a) of this section, murder in the second degree is a class 3 felony if the act causing the death was performed upon a sudden heat of passion...".

Ordinarily, the drafter should specify a class of felony, misdemeanor, petty offense, or civil infraction for every crime added to the statutes consistent with the classification schemes established in part 4 of article 1.3 of title 18, C.R.S. This is especially true for felonies. If a class is not specified, there is the possibility that provisions that are based on the specific classes will not apply to the crime. (See, for example, sections 17-22.5-403, 18-1.3-504, and 18-1.3-506, C.R.S.)

Section 18-1.3-401, C.R.S., sets forth the classification of felonies and establishes a minimum and a maximum penalty. Section 18-1.3-501, C.R.S., sets forth the classification of misdemeanors, and section 18-1.3-503, C.R.S., sets forth the classification of petty offenses and civil infractions.

The drafter should use the word "commits" when referring to a specifically defined crime, in title 18, C.R.S., the "Colorado Criminal Code". For example:

... commits second degree official misconduct ...

The drafter should use specific statutory section references when working with a penalty clause outside title 18. For example, in the case of a specifically defined crime:

> ... commits second degree official misconduct, as defined in section 18-8-405.

Previously, it was common to use the verb "commits" when referring to the penalty, for example, "commits a class 2 misdemeanor". Now the preferred practice when referring to the penalty is "Murder in the first degree is a class 1 felony." But, there may be circumstances when the structure of the crime makes using the verb "commits" preferable or the sponsor may prefer to use the verb "commits".

When making reference to a crime for which the penalty is detailed within the section or when "misdemeanor" or "felony" is used without reference to the class of misdemeanor or felony as established by the "Colorado Criminal Code", the term "commits "

is preferred. For example:

> ... commits a misdemeanor and, upon conviction, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

> ... commits murder and, upon conviction, shall be punished by imprisonment in the state penitentiary for not less than one year nor more than fifteen years.

> ... commits a misdemeanor.

The penalty for a petty offense is set forth in section 18-1.3-503, C.R.S., following the words "upon conviction". Therefore, when adding a petty offense to the statutes, it is not necessary to include the words "upon conviction". As is the case with misdemeanors and felonies, if the penalty is set out in the "Colorado Criminal Code", the drafter should use the following language:

> ... is a petty offense.

If the penalty is in a statute outside the "Colorado Criminal Code", the drafter should use the following language:

> ... is a petty offense and shall be punished as provided in section 18-1.3-503.

Since the actual penalty imposed is determined by the court, the penalty language must state "and shall be punished" rather than "is punished", as illustrated in these examples.

When establishing a penalty for a new crime, the drafter needs to consider whether there are existing criminal statutes that punish the same conduct as in the new crime. It is a violation of equal protection for two criminal laws that punish the same conduct to have different levels of punishment.

2.6.7.1.3 Affirmative Defenses, Exceptions, and Immunity Provisions

The drafter needs to specify any **affirmative defenses** for or **exceptions** to the crime. Drafting an affirmative defense or exception is similar to drafting the elements of an offense; the drafter should specify the conduct or attendant circumstances that give rise to the defense or exception. An affirmative defense or exception should be drafted separate from the elements of the crime in its own subsection.

The key distinction between an affirmative defense and an exception is the impact on the defendant. An affirmative defense is an element or series of elements that the defendant must prove at trial to secure an acquittal. In contrast, an exception requires that the prosecutor or court dismiss the charges before a trial when the elements are met. An exception is more beneficial to a defendant since there is no trial.

Examples:

> (3) It is an affirmative defense that the offender reasonably believed that his or her conduct was necessary to __ ....
>
> or
>
> (4) It is an exception to the offense of __ if the offender __.

The drafter needs to identify any **exceptions** or **immunity** to the criminal act.

Examples:

> (5) This section does not apply to a medical caregiver with prescriptive authority or authority to administer medication who prescribes or administers medication for palliative care to a terminally ill patient....
>
> or
>
> (6) An occupant of a dwelling using physical force, including deadly physical force, ... is immune from criminal prosecution for the use of such force.

2.6.8 Declaration of Special Factors

Despite the prohibition on special legislation found in section 25 of article V of the state constitution, bills may be drafted to govern special situations or geographical areas when conditions prevent a general law being made applicable. Examples are the regional transportation district law, article 9 of title 32, C.R.S., the three lakes water and sanitation district law, article 10 of title 32, C.R.S. A drafter may model language justifying this type of bill on the language used in the regional transportation district statute:

> **32-9-102. Legislative declaration.** (1) The general assembly determines, finds, and declares:
>
> ****
>
> (b) That a general law cannot be made applicable to the district and to the properties, powers, duties, functions, privileges, immunities, rights, liabilities, and disabilities of such a district as provided in this article 9 because of a number of atypical factors and special conditions concerning the district.

2.6.9 Accountability Clause

In 2006, section 2-2-1201, C.R.S., was enacted and this section provides for the post-enactment review by the legislative service agencies of the implementation of certain bills. The legislative service agencies are required to conduct a post-enactment review for any enacted bill that includes *both* an accountability clause and a legislative declaration setting forth the desired results or benefits to be achieved by the bill, as intended by the General Assembly.

An accountability clause is defined as "a noncodified provision of a bill that directs legislative staff agencies to conduct a review of the implementation of the bill either two or five years, as specified in the provision, after the enactment of the bill." Depending on the time within which the legislative service agencies are to complete a post-enactment review, an accountability clause should take the following form with the appropriate time period selected:

> **SECTION #. Accountability.** Two/Five (select one) years after this act becomes law and in accordance with section 2-2-1201, Colorado Revised Statutes, the legislative service agencies of the Colorado general assembly shall conduct a post-enactment review of the implementation of this act utilizing the information contained in the legislative declaration set forth in section 1 of this act.

An accountability clause should be placed toward the end of a bill, after any section of the bill with an appropriations clause but prior to any section of the bill with other noncodified clauses such as an effective date clause, a safety clause, or a referendum clause. Based upon the estimated cost of conducting a post-enactment review as reflected in the bill's fiscal note, a future appropriation clause should also be added following any section of the bill with an appropriations clause but prior to the accountability clause section.

The title of any bill that has an accountability clause and the related legislative declaration should indicate that the bill requires a post-enactment review. The drafter should add the following trailer at the end of the title: "..., AND, IN CONNECTION THEREWITH, REQUIRING A POST-ENACTMENT REVIEW OF THE IMPLEMENTATION OF THIS ACT." Similarly, any amendment that adds an accountability clause and the related legislative declaration should also amend the title of the bill to include this trailer in the title indicating the addition of a post-enactment review requirement.

The drafter should include an accountability clause and the related legislative declaration in a bill only when requested by a member. When discussing the use of an accountability clause with a member, the drafter should ask whether the post-enactment review is to be conducted two or five years after the bill's enactment. The drafter should also inform the member that, in addition to an accountability clause, a legislative declaration must be included in the bill to trigger a post-enactment review. The legislative declaration, which may be codified or noncodified, should specify the desired results and benefits of the bill, as intended by the General Assembly, as this information is to be used by the legislative service agencies to conduct the post-enactment review. Lastly, a drafter should inform the member that requiring a post-enactment review may result in a fiscal note for and a future appropriation clause added to the bill as the resources required for the legislative service agencies to conduct the post-enactment review will need to be reflected in each bill that requires a post-enactment review.

2.6.10 Drafting a "Notice to the Revisor of Statutes" Provision in a Bill

Drafters sometimes need to make a statutory provision in a bill take effect or repeal sometime in the future following the occurrence of a triggering event. Generally, at the time of publication of the legislation, the Office does not know whether the triggering event has occurred resulting in uncertainty about what law is to be published. Therefore, drafters frequently include a "notice to the revisor of statutes" provision requiring an individual to notify the revisor of statutes when the triggering event has taken place.

When drafting this type of provision, it is important that the drafter follow these guidelines:

1. Clearly identify an **individual** by title (not a branch of state government or other entity) who is responsible for notifying the revisor of statutes.
2. Specify that the notice must be **in writing**.
3. Clearly state what event or condition precedent must occur to trigger the effectiveness (or repeal) of the law.
4. Identify with specificity what should result upon the occurrence of the triggering event or condition precedent. For example, does the section take effect once that event transpires? Or should the section be repealed at that time?
5. Place the notice requirement in **statutory language** so that the legislation establishes a **legal duty** that the individual must send the notice. Do not put the notice in an effective date or act-subject-to-petition clause at the end of the bill.
6. When drafting a notice-to-the-revisor-of-statutes provision, use the recommended language below, including the specific **email address**, that the

individual must use to notify the revisor of statutes. The recommended notice-to-the-revisor-of-statutes provision has been added to the canned language "CAN LAN" button in WordPerfect. If the drafter believes that there is a need to deviate from the standard language, the drafter should consult with the revisor of statutes.

Example:

(#) THIS [C.R.S. SUBDIVISION] WILL [TAKE EFFECT/BE REPEALED] IF [IDENTIFY THE TRIGGERING EVENT, SUCH AS "THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES ISSUES THE WAIVER REQUESTED PURSUANT TO THIS SECTION"]. THE [NAME A PERSON BY TITLE (NOT A DEPARTMENT) WHO WILL HAVE THE DUTY TO SEND THE NOTICE SUCH AS "EXECUTIVE DIRECTOR OF THE DEPARTMENT"] SHALL NOTIFY THE REVISOR OF STATUTES IN WRITING OF THE DATE WHEN THE CONDITION SPECIFIED IN THIS [C.R.S. SUBDIVISION] HAS OCCURRED BY EMAILING THE NOTICE TO REVISOROFSTATUTES.GA@COLEG.GOV. THIS [C.R.S. SUBDIVISION] [TAKES EFFECT/IS REPEALED, EFFECTIVE] UPON THE DATE IDENTIFIED IN THE NOTICE THAT THE [TRIGGERING EVENT] OCCURRED OR, IF THE NOTICE DOES NOT SPECIFY THAT DATE, UPON THE DATE OF THE NOTICE TO THE REVISOR OF STATUTES.

Drafters should use the Canned Language macro and select the "Notice to Revisor" option when including a notice to the revisor of statutes in a bill.

2.7 Legislative Declarations and Legislative Intent Statements

Many times legislators or lobbyists request the inclusion of a legislative declaration or legislative intent statement in a bill. Because the statements may be used by the courts to interpret the statute or may include representations that could generate litigation, the drafter should exercise care in writing these statements.

2.7.1 The Difference Between a Legislative Declaration and a Legislative Intent Statement

It is important that a drafter understand the distinction between a legislative declaration and a legislative intent statement. A **legislative declaration** is an explicit or formal statement or announcement about the legislation. It may provide such things as information or value statements about the subject addressed in the bill, findings made by the General Assembly, the history of a particular issue, or the manner for accomplishing a desired result. Often a legislative declaration indicates the problems the General Assembly is trying to address and includes a

statement that the General Assembly is enacting this legislation to fix these problems. A **legislative intent statement** indicates the intended purpose or aim of the legislation or it may indicate the state of mind of the legislature at the time it is enacting the measure. It usually includes a statement of the desired result. In some instances, it may include a statement of what is *not* the intended result. Many statements are a combination of information and intent.

2.7.2 Purpose of the Declaration or Statement

A drafter should evaluate the purpose for including a legislative declaration or a legislative intent statement. Is it included for the purpose of making people feel good, such as celebrating motherhood and apple pie? Is it desired for no real purpose other than to garner support for the bill? Is it included for the purpose of establishing the desired result when the result may not be apparent from the act itself? Is it a persuasive or factual statement included for the purpose of justifying the enactment of the bill and promoting its passage? If the answer to any of these questions is yes, the drafter should consider suggesting to the sponsor that these kinds of statements might be more appropriate in a fact sheet or information sheet prepared for the committee of reference instead of being included in the bill. Although the sponsor has the ultimate decision about the inclusion of these kinds of statements in a bill, the drafter can attempt to discourage them and at least be careful about the accuracy of the statements or representations made in these kinds of statements. In addition, a legislative declaration could be included as nonstatutory material that would only appear in the Session Laws rather than in the Colorado Revised Statutes.

On the other hand, there are some legitimate reasons for including a legislative declaration or legislative intent statement in legislation. For example, a legislative declaration can be used for the purpose of establishing an historical perspective to justify the enactment of the bill. See SB00-181 in Session Laws of Colorado 2000, p. 492. Like persuasive or factual statements, historical statements must be accurate. Legislative declarations may be used in anticipation of a challenge to the legislation in a court case and may be included for the purpose of establishing a justification for the bill that will stand up in court. *See* section 8-2-120, C.R.S., regarding residency requirements, or section 24-46.5-101, C.R.S., regarding whether business incentives for United Airlines were special legislation. The drafter may include statements to show the connection between a special session call item and the proposed bill. An example is HB 91S2-1027, pertaining to the funding of education and medicaid and changes in the tax procedures. Another legitimate purpose of legislative intent statements is where the General Assembly provides a statement about the intent of the General Assembly to the public, the administrators of the law, and to the court. For examples, *see* section 13-21-119, C.R.S., regarding the exemption from liability for equine or llama activities and section 13-80-103.7, C.R.S., regarding the extension of the statute of limitations. Sometimes the General Assembly includes a statement about what the General Assembly did **not** intend. *See* section 14-10-103 (3), C.R.S., regarding the change of the term

"visitation" to "parenting time". Statements have also been included in bills that were enacted in response to court cases. See sections 26-1-126.5 and 2-4-215, C.R.S.

2.7.3 Role of a Legislative Declaration or Legislative Intent Statement

As a general rule, legislative declarations and legislative intent statements are only helpful to the courts if there are questions regarding the statute. Under rules of statutory construction and section 2-4-203, C.R.S., the courts only look to the legislative declaration or purpose if a statute is ambiguous.

Statements may be used to construe the scope and effect of a statute. "In construing the scope and effect of a statute, [the court must] seek out the intent of the legislature in voting its passage. Perhaps the best guide to intent is declaration of policy which frequently forms the initial part of an enactment".*See St. Luke's Hosp. v. Industrial Comm'n*, 142 Colo. 28, 32, 349 P.2d 995, 997 (1960).

The general rule is that a legislative intent statement does not confer power or determine rights. However, there have been cases where courts have construed a legislative declaration or legislative intent statement as creating rights or entitlements to programs. Litigation has also been based upon value statements, goals, or promises set forth in a legislative declaration. Drafters should be very cautious about including statements that could be viewed as creating a substantive right or a promise that the state will do something.

2.7.4 Guidelines for Drafting Legislative Declarations or Legislative Intent Statements

1. A legislative declaration or legislative intent statement should serve a legitimate purpose. Statements that serve other purposes should be avoided. Encourage members to make the arguments for their bills in a position or information statement instead of in the bill. If that can't be avoided, at least include the statement only as nonstatutory material.

2. A statement should not be characterized as "legislative intent" when it really is a "legislative declaration" and vice versa. Consider the use of the term "legislative findings".

3. A legislative declaration or legislative intent statement should accurately reflect the content of the bill and remain accurate as the bill is amended in the legislative process.

4. There should be a connection between the desired result and the reasons stated in the statement. Decide what the purpose of the statement is to be and then make the words accomplish the purpose.

5. Facts or statements in a legislative declaration or legislative intent statement should be verified for accuracy. Statistics should be avoided.

6. A legislative declaration or legislative intent statement should not create a right or prohibit any action and should not otherwise create substantive law. The drafter should evaluate whether the statement is promising something on behalf of the state that could be used as a basis for a lawsuit against the state for failing to meet that promise.

7. A legislative intent statement should not be ambiguous. If it is, the statement may be used for an unintended purpose.

8. A legislative intent statement should not be a substitute for precise and accurate legislative bill drafting. If a bill is properly drafted, the intent is self-evident.

9. As a general principle, a legislative declaration or a legislative statement should not be written unless there is a legitimate reason for its inclusion.

2.7.5 Format of a legislative declaration, nonstatutory legislative declaration, or legislative intent statement.

1. Use semicolons at the end of paragraphs in statutory and nonstatutory legislative declarations. If the paragraph contains more than one sentence, use a period.

2. In a statutory legislative declaration or legislative intent statement:

    a. Numbers should be spelled out in words in the same way that numbers are spelled out throughout the Colorado Revised Statutes.

    b. Follow standard drafting guidelines for statutory provisions.

3. In a nonstatutory legislative declaration:

    a. Numbers:

        i. Should be written as digits in the same manner as in the bill summary;

        ii. The number one should be spelled out unless it is attached to a percent sign, such as 1%;

        iii. Larger numbers may be written as a combination of words and digits, such as $5 billion;

        iv. Cardinal numbers, such as first, second, or third, should be spelled out;

v. Fractions should be spelled out or written with a decimal point, such as one and three-fourths or 1.75.

b. Use symbols for percent signs, such as 2%, and dollar signs, but do not use bulleted lists or cent signs.

c. Do not use parentheses to define or shorten a term or phrase. While this approach may be acceptable in a bill summary, in a nonstatutory legislative declaration, either the whole term should be repeated each time it is used or it may be shortened by using a phrase such as "referred to in this section as". For example:

> ... the office of information technology, referred to in this section as the "office".

d. Spell out Colorado Revised Statutes because the nonstatutory legislative declaration will not be printed in the Colorado Revised Statutes.

2.8 Drafting a Compact – Compacts Versus Model Laws

Drafters are often given a draft bill that purports to be a compact. In perhaps a majority of instances, it is not a compact; it is a model law that the proponents wish to invest with the dignity of a compact. But they are very different things that need to be treated differently.

Usually, a fully executed compact is, simultaneously, three things:

1. **A contract between at least two states**. A compact is typically negotiated by designees of the governor or other official representative of the states, not a private organization. If a compact is violated, the various states' exclusive litigation remedy is to sue each other directly in the United States Supreme Court. Individuals typically have no standing to enforce a compact.

2. **State law enacted by the contracting states' legislatures.** Because a compact is a contract, and a contract cannot be unilaterally modified by any of the contracting parties, if a bill is actually a compact, it needs to be enacted **without any changes - none**. Look at, e.g., most of the parts in article 60 of title 24 - typically there's a C.R.S. section that states a short title and another C.R.S. section that reproduces the compact as is - without any changes. There should be either a direction to the governor or a designee of the governor to enter into the compact or a portion of the compact that includes the signatures or other acknowledgment of execution by the other compacting states.

3. **Federal law.** A compact that increases the power of states at the expense of the federal government cannot take effect under the federal constitution unless Congress approves it; this element is not required if the compact does not so increase the states' power.

The applicable portion of the US constitution, Article I, Section 10, states:

> No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

In contrast, many of the things given to drafters that purport to be compacts are really model laws. There has been no contract between the states, nor any plan to enter into one; instead of a compact, the proponents are organizations or individuals that would benefit from having similar laws in various states, not the states themselves. The laws are enforceable by parties other than the enacting states. The laws are enacted only in more or less similar form. There has been no approval by Congress nor any plan to get it.

This information from Wikipedia contains a good summary of an interstate compact:

> In the United States of America, an interstate compact is an agreement between two or more states. Article I, Section 10 of the United States Constitution provides that "No State shall, without the Consent of Congress... enter into any Agreement or Compact with another State." Consent can be obtained in one of three ways. First, there can be a model compact and Congress can grant automatic approval for any state wishing to join it, such as the Driver License Compact. Second, states can submit a compact to Congress prior to entering into the compact. Third, states can agree to a compact then submit it to Congress for approval, which, if it does so, causes it to come into effect. Not all compacts between states require explicit Congressional approval - the Supreme Court ruled in Virginia v. Tennessee that only those agreements which would increase the power of states at the expense of the federal government required it.
>
> Frequently, these agreements create a new governmental agency which is responsible for administering or improving some shared resource such as a seaport or public transportation infrastructure. In some cases, a compact serves simply as a coordination mechanism between independent authorities in the member states.
>
> Such compacts are distinct from Uniform Acts, which are model statutes produced by non-governmental bodies of legal experts to be passed by state legislatures independently.

It is incumbent on the drafter to determine, precisely, whether a draft provided to the drafter is a compact before trying to codify it. If it's truly intended to be a compact, even if the other two elements—contract and congressional approval—are not yet in place, it should generally be codified as a part in article 60 of title 24 and should not be altered in any way, including by amendment. You the drafter should explain this in no uncertain terms to both the sponsor and any legislator who tries to amend it. If it really is simply a model law, the drafter should explain that fact to the sponsor and not codify it as a part in article 60 of title 24. Legislation that creates a model law may be altered or amended however the sponsor or the General Assembly wishes, and should not be referred to as a compact.

Chapter 3: Amendments to Bills

3.1 Introduction

Amendments to bills are of two types:

1. **Committee amendments** - amendments proposed by members of the committee of reference to which a bill is referred. These amendments, if adopted by the committee, are combined into a final committee report, which is offered for consideration by the committee of the whole on second reading.

2. **Floor amendments** - amendments proposed by individual members as a bill is being considered on the floor, either on second reading in the committee of the whole or on third reading. A second reading floor amendment may amend either the committee report or the bill.

Amendments may be prepared by the members themselves or, in the case of floor amendments, by the amendment clerk, without assistance from the designated bill drafter, but in most cases, members request the drafter to prepare proposed amendments ahead of time. The principles and techniques set out in this manual for drafting bills apply equally to the preparation of amendments. Particular note should be taken of the provisions concerning gender-neutral drafting and the use of the "user-friendly" format in which certain provisions that are not being amended, for example subparagraphs in a series, are included to aid comprehension.

The same degree of care must be used in preparing amendments as in drafting bills. Many defects in enacted legislation are the result of amendments that were carelessly prepared or too hurriedly drafted or that did not fit logically into the bill. An amendment to a bill should be consistent with the entire bill being amended and with any affected existing law. Depending on how extensive an amendment is, other portions of the bill may also have to be changed or additional "conforming" changes to existing law may have to be added to the bill.

Care should also be taken to avoid introducing errors when an amendment requires renumbering of provisions in a bill. For example, if an amendment adds a new section to a bill, the drafter should be sure to change any reference to specific bill sections in an effective date or applicability clause to correspond to the inclusion of the new section. If an amendment renumbers a C.R.S. section, the drafter must check the remainder of the bill to correct any cross-references to the renumbered provision.

If an amendment changes a date in a bill, the drafter should be sure to check for any other dates that need to be changed as well. For example, in a sunset bill there are usually two future repeal dates and both dates need to be changed if the future repeal date is changed in one section.

The drafter is responsible for checking amendments to the bill by reviewing the preamended bill as it goes through the process. Since some of the amendments adopted may be prepared by persons who are not as familiar with the bill, it is important that the drafter check all amendments very carefully by rereading the entire bill. The drafter should check for errors in form and internal references and for conflicts or inconsistencies between sections. The drafter should also be alert to issues relating to title questions or other legal problems caused by amendments. See section 3.5 of this chapter.

While most of the information in this chapter is directed toward amending bills, it will generally apply to amending resolutions and memorials as well.

Examples of committee and floor amendments prepared by the Office of Legislative Legal Services can be found at the end of this chapter. Further examples can be found in Appendix C of this manual.

3.2 Amending the Correct Document

Amendments are made to the current version of a bill, which are the following:

- The printed bill as introduced;
- The engrossed bill prepared after second reading in the first house;
- The reengrossed bill prepared after third reading in the first house;
- The revised bill prepared after second reading in the second house; or
- The rerevised bill prepared after third reading in the second house.

Amendments may also be made to a pending amendment or committee report. When an amendment is made to a pending committee report, either by a previous committee or on the floor, the amendment is made to the original committee report, as it was separately printed and distributed, rather than to the version printed in the house or senate journal. In the house, the original committee report is printed on green paper and often referred to as the "green sheet". In the senate, the original committee report is printed on purple paper and often referred to as the "purple sheet".

To determine which version of a bill is to be amended or whether the committee report should be amended, the drafter must first determine "where the bill is" in the legislative process. The Colorado Legislative Information and Communications System (CLICS) should be used to ascertain the current status of the bill.

To prepare a committee amendment or second reading amendment for a bill that is in the house of origin, amend the printed bill and any committee report (for second reading amendments) or

any applicable prior committee amendments (for committee amendments). For a third reading amendment in the house of origin, amend the engrossed bill.

To prepare a committee amendment or second reading amendment in the second house, amend the reengrossed bill and any committee report (for second reading amendments) or any prior committee amendments(for committee amendments) in that house. For a third reading amendment in the second house, amend the revised bill.

Note: It is rare that a drafter is requested to prepare a third reading amendment in either house; third reading amendments are generally disfavored and usually limited to technical, as opposed to substantive, changes to the bill as adopted on second reading. If a bill reaches third reading without having been amended in committee or on second reading, the bill as introduced in that house will be the only paper version available. In the first house, that will be the "printed bill"; in the second house it will be the "reengrossed bill". However, a third reading amendment should still refer to the "engrossed" or "revised" bill, as appropriate, to reflect the fact that the bill has gone through second reading. The house and senate enrolling rooms update the version of the bill electronically even if there are no amendments, and the updated version of the bill will be available on the general assembly's website.

3.3 Drafting Amendments

3.3.1 General Guidelines

The drafter should remember the following points in the preparation of amendments to bills.

1. When amending any version of a bill, a committee report, or another amendment, identify the document being amended in the first amendment instruction and refer to the page and line number where changes are made or inserted. It is not necessary to refer to the section number of the bill. Repeat the page number for each subsequent amendment instruction, and end each amendment instruction with a period. For example:

    Amend printed bill, page 2, line 1, strike "AFTER" and substitute "BEFORE".

    Page 2, line 3, strike "AFTER" and substitute "BEFORE".

    Page 3, line 2, strike "AFTER" and substitute "BEFORE".

    Amendment instructions that strike multiple consecutive lines or strike an entire page do not follow this "Page X, line X, strike ..." format. The instruction should strike one or more entire lines or pages. For example:

    Amend printed bill, page 2, line 1, strike "AFTER" and substitute "BEFORE".

Page 4, strike lines 15 through 27.

Strike page 5.

2. For the amendment instructions, the drafter may strike words or phrases, strike words or phrases and substitute other words or phrases, insert words or phrases, or add words or phrases.

   To remove new language from the bill, the drafter should specify the word or words to be removed:

   Page 11, line 22, strike "HOSPITAL".

   To indicate that the existing statute will be changed, the words need to be shown stricken, then followed by the new terms in small caps:

   Page 11, line 24, strike "hospitals" and substitute "~~hospitals~~ FREE-STANDING CLINICS".

   If the words being changed are **not** in existing statute but are being added to it, they should not be shown stricken but simply replaced as follows:

   Page 12, line 15, strike "HOSPITALS" and substitute "FREE-STANDING CLINICS".

   Put text on a separate line from the amendment instruction and add a blank line only when adding a new amendment instruction or when it is necessary to indicate formatting, such as a "Left Tab":

   Page 7, after line 11 insert:

   "(5) NOTHING IN THIS ARTICLE 27 REQUIRES AN EXISTING COUNCIL TO RECONFIGURE OR RECONVENE.".

   Amend the Health and Human Services Committee Report, dated February 28, 2020, page 2, after line 11 insert:

   "Page 6 of the reengrossed bill, line 9, after "DISABILITIES." add "THE REPORT MUST ALSO INCLUDE A SUMMARY OF THE NUMBER OF JOBS OBTAINED FOR PERSONS WITH DEVELOPMENTAL DISABILITIES, AND THE NUMBER OF JOBS RETAINED BY THOSE INDIVIDUALS AT THREE MONTHS, SIX MONTHS, AND NINE MONTHS FOLLOWING THE INITIAL PLACEMENT.".".

   New material can be added to the end of a subsection or paragraph using "add" as the instruction:

Page 9, line 16, after the period add "NEW SENTENCE(S)."

New material can be inserted into the middle of a sentence or paragraph using "insert" as the instruction:

Page 2, line 21, after the period insert "NEW SENTENCE(S).".

Note: If there is more than one period on a line, the instruction should specify the first period, second period, etc., or include the word before the period.

Page 4, line 5, after "a" insert "CURRENT AND VALID".

3. Punctuation marks that are part of the amended material are placed inside the quotation marks. Punctuation marks that are not part of the amended material are placed outside the quotation marks. This may result in two or more sets of "nested" quotation marks. For example:

Amend the Transportation and Energy Committee Report, dated February 15, 2020, page 3, after line 26 insert:

"Page 24 of printed bill, line 17, after the period add "THE SALES AND USE TAX EXEMPTION GRANTED TO A LESSOR OF TANGIBLE PERSONAL PROPERTY WHO AGREES TO COLLECT SALES TAX ON LEASE PAYMENTS UNDER SECTION 39-26-114 (1)(a)(XII) SHALL NOT APPLY TO THE SALES AND USE TAX IMPOSED PURSUANT TO THIS SUBSECTION (1)(b).".".

Page 3 of the report, line 27, strike "SHALL" and substitute "MAY".

Page 8 of the report, line 10, strike ""39-26-123 (2)."." and substitute ""39-26-123 (2). THE SALES AND USE TAX EXEMPTION GRANTED TO A LESSOR OF TANGIBLE PERSONAL PROPERTY WHO AGREES TO COLLECT SALES TAX ON LEASE PAYMENTS UNDER SECTION 39-26-114 (1)(a)(XII) SHALL NOT APPLY TO THE SALES TAX IMPOSED PURSUANT TO THIS SUBSECTION (2)(c).".".

Page 9 of the report, after line 12 insert:

"Page 58 of the bill, line 2, after the period add "THE SALES AND USE TAX EXEMPTION GRANTED TO A LESSOR OF TANGIBLE PERSONAL PROPERTY WHO AGREES TO COLLECT SALES TAX ON LEASE PAYMENTS UNDER SECTION 39-26-114 (1)(a)(XII) SHALL NOT APPLY TO THE TAX ON MOTOR VEHICLES AND RELATED ITEMS IMPOSED PURSUANT TO THIS SUBSECTION (1).".".

Page 9 of the report, line 13, strike "SHALL" and substitute "MAY".

4. Joint rule no. 21 of the Colorado Senate and House of Representatives, concerning capitalization of new material and canceled letter type (strike type) for material to be omitted, applies to amendments in the same manner as it applies to bills.

5. To indicate a series of lines or pages, use "through" to ensure inclusion of the final page or line number mentioned. For example:

   > Page 10 of the reengrossed bill, strike lines 11 through 15.

   Note, this departs from the statutory style favoring "to" over "through". See section 2-4-113, C.R.S.

6. If the drafter prepares two amendments that are to be inserted at the same point, such as on the same page and between the same two lines, the drafter should place the amendment that the drafter intends for the enrolling room to insert first after the line above that point and the second amendment before the line below that point. For example:

   Amendment No. 1:

   > Amend printed bill, page 5, after line 16 insert:

   Amendment No. 2:

   > Amend printed bill, page 5, before line 17 insert:

7. Sometimes, the changes made by an amendment will require corresponding changes to the title of the bill. If so, the title changes should go at the end of the amendment, and the quoted portions of the title should appear in bold type:

   > Amend printed bill, page 1, line 102, strike "HOSPITAL" and substitute "FREE-STANDING CLINIC".

8. Some amendments provide for striking a bill in its entirety below the enacting clause and substituting a new bill. A "SEBEC amendment" ("**S**trike **E**verything **B**elow the **E**nacting **C**lause") may be used when amendments are so extensive and numerous that amending the bill piecemeal would be clumsy or confusing. However, the decision to prepare a SEBEC amendment should always be reviewed with the sponsor, because some members may be reluctant to vote for an entirely new bill in which the changes from the prior version are not readily apparent.

9. If an amendment is made to a committee report, give the name of the report using initial capitals (e.g., "Judiciary Committee Report"), the date of the report, and the page and line number amended in the report, as follows:

> Amend the Education Committee Report, dated April 1, 2020, page 4, strike lines 9 through 31.

10. If most of the committee report is to be amended, the drafter may choose to strike the committee report and substitute it with amendments to the bill. If more than one committee report is stricken, strike the most recently adopted committee report first. For example, if the Judiciary Committee report was adopted January 15 and the Appropriations Committee report was adopted March 15, strike the Appropriations Committee report first and then the Judiciary Committee report:

    > Strike the Appropriations Committee Report, dated March 15, 2018.
    >
    > Strike the Judiciary Committee Report, dated January 15, 2018, and substitute:
    >
    > "Amend printed bill, page 2, line 16, ... [etc.]".

    Other examples of amendments striking committee reports appear in Appendix C.22 of this manual. Note that the "settled question" rule in the house creates differences in the proper form and timing of these amendments, depending on whether they are offered in the house or the senate.

11. Sometimes a legislator will ask to "amend an amendment" that has not yet been adopted. This may happen, for example, if a lengthy amendment has already been distributed to committee members before the hearing, and the sponsor or another member wishes to offer a small change to it during the hearing. To amend a proposed committee amendment, identify it as the "proposed amendment," cite the storage number in parentheses, and give the page and line number as for any other amendment:

    > Amend proposed committee amendment (HB1137_L.001), page 1, line 14, ... [etc.]

    Other examples of amendments to amendments appear in Appendix C of this manual.

12. In an amendment to another amendment, such as a floor amendment to a committee report, references to specific pages and lines are sometimes confusing because the page and line numbers might refer to the original bill or to the amendment being amended. In such cases the drafter should always include a reference to the document being amended each time a page number is given. The example for paragraph (3) above, illustrating proper punctuation when quoting other amendments, also illustrates how to clarify references to the bill and a committee report. Other examples appear in Appendix C.4 of this manual.

13. When an amendment changes or strikes a phrase that extends over two successive lines, the drafter may include references to both lines in one instruction instead of writing a separate instruction for each line. For example, if the phrase "beyond a reasonable doubt" is being changed to "by clear and convincing evidence" and a line break occurs after "beyond a", the amendment can be written as follows:

    > Page 1, lines 7 and 8, strike "BEYOND A REASONABLE DOUBT" and substitute "BY CLEAR AND CONVINCING EVIDENCE".

14. **Repetitive amendments.** Occasionally a drafter will draft an amendment that changes a word, term, or phrase that occurs repeatedly in the bill. If it becomes too cumbersome to write a separate instruction for each occurrence, the drafter can identify all occurrences in a single instruction. In this case, the drafter should place the instruction at the end of the amendment after any single change instructions but before the title change. Drafters have discretion when determining when to use this format. There is no threshold requirement for when the format must be used.

    When drafting a repetitive amendment,, the language change comes first, followed by the locations of the change using **bold** for each new page number. The amendment looks like this:

    > Strike "private security company" and substitute "governmental agency" on: **Page 2**, lines 8 and 10; **Page 3**, lines 4, 9 and 10, and 16 and 17; **Page 4**, lines 9 and 10, 11 and 12, 15 and 16, 21, and 24; **Page 5**, line 23; **Page 6**, line 1, 7, 9, and 14 and 15; **Page 7**, line 7, 9, 13, 17, 18, 20, and 23 and 24; and **Page 8**, lines 15 and 16, 17 and 18, 21, and 26.

    If a drafter changes a term this many times, there will probably be instances when the term has a comma, semi-colon, colon, apostrophe, or period attached. The Office's amendment drafting standard normally requires that the drafter include with the term any attached punctuation. When using the format for repetitive amendments, the punctuation is not attached. However, the punctuation will still remain in the bill, so drafters need to be careful in reviewing the preamended bill after adoption of a repetitive amendment to ensure that the punctuation has not been inadvertently removed or changed. Additionally, a term used multiple times may occasionally start a sentence, but drafters do not need to show or make a separate amendment line for the initial capped instances of the term.

    Another complication could arise if there are multiple references to the same term on a line or lines listed in a repetitive amendment. For example:

    Desired amendment is to change "EXECUTIVE DIRECTOR" to "DEPARTMENT".

> Page 7, line 15 reads ". . . PURSUANT TO RULES PROMULGATED BY THE EXECUTIVE".
>
> Page 7, line 16 reads "DIRECTOR. THE EXECUTIVE DIRECTOR SHALL REPORT ANNUALLY TO THE GENERAL ASSEMBLY."

In this situation, the instruction would look like this:

> Strike "EXECUTIVE DIRECTOR" and substitute "DEPARTMENT" on: **Page 7**, lines 15 and 16, and line 16.

This makes it clear that the term that is split between lines 15 and 16 and the complete term on line 16 are both changed. If for some reason the amendment is intended to only change the term that is split between lines 15 and 16 and not the complete term on line 16, then there would be no reference to just line 16 and it would be clear the amendment only changes the split term between lines 15 and 16.

On occasion, the complete phrase may appear more than once on a single line.

> Desired amendment is to change "EXECUTIVE DIRECTOR" to "DEPARTMENT".
>
> Page 7, line 16 reads "EXECUTIVE DIRECTOR. THE EXECUTIVE DIRECTOR SHALL REPORT ANNUALLY TO THE GENERAL."

In this situation, the instruction would look like this:

> Strike "EXECUTIVE DIRECTOR" and substitute "DEPARTMENT" on: **Page 7**, line 16 two times.

3.3.2 Drafting House Amendments - Settled Questions

The house of representatives follows the rule that once a question has been "settled" by the body, for example by a committee of reference or the committee of the whole, it cannot be given further consideration except through formal reconsideration. The application of this rule means that:

1. The drafter should write any group or series of committee amendments for the same sponsor to "dovetail" with each other and not touch the same portions of the bill if possible, or, if that is not possible, the drafter should advise the sponsor to treat them as alternatives or substitutes for each other.
2. During second reading, a committee report or floor amendment cannot be amended after it has been adopted. Therefore, the drafter should use the following guidelines when drafting house floor amendments:

a. The drafter will need to decide whether to make the amendment to the printed (or reengrossed) bill or to the committee report. In making that determination, the drafter needs to use great caution to be sure an amendment drafted to the printed or reengrossed bill does not put the amendment sponsor in a situation where the amendment will relate to language already changed when the body voted on the committee report. If the presiding officer determines the issue is a settled question, the presiding officer will rule the amendment out of order and will not allow the amendment sponsor to offer the amendment. In some instances, the drafter may be able to achieve the desired result by amending just the committee report, i.e., by inserting into the committee report the desired amendment to the bill. In other instances, the amendment can be split into more than one amendment with certain amendments being made to the committee report and the other issues that are not settled questions being made to the printed bill and handled after the committee report is adopted.

b. Do not make amendments to both the printed (or reengrossed) bill and a committee report in the same amendment.

c. In the case of an amendment to a proposed amendment, see item 3.3.1 (11) above, the drafter should inform the sponsor that the amendment to the proposed amendment needs to be offered before the proposed amendment itself is adopted. Remember, the senate rule is just the opposite. See section 3.3.3 below.

3.3.3 Drafting Senate Amendments

Unlike the house of representatives, the senate does not follow the settled question rule described above in section 3.3.2. In the senate, the drafter may amend different documents, such as a committee report and the printed or reengrossed bill, in the same amendment. For example:

> Amend the Finance Committee Report, dated January 20, 2020, page 1, line 6, strike "AN" and substitute "A COMPLETED".
>
> Page 1, line 11, after "REGISTER" insert "BY ENDORSEMENT".
>
> Amend printed bill, page 4, line 12, strike "(c)" and substitute "(5)".
>
> Page 4, line 14, strike "(5)" and substitute "(6)".

During second reading in the senate, a committee report, or any other kind of floor amendment, cannot be amended until **after** it has been adopted by the body. Floor amendments are considered by the body in the order they are turned in to the secretary of the senate. If the drafter prepares an amendment to a proposed amendment for second reading, the drafter should

inform the sponsor that the amendment to the proposed amendment needs to be offered after the proposed amendment is adopted.

3.4 Committee of the Whole ("COW") Amendments

The committee of the whole in both houses consists of the full body of the house or senate, sitting as a committee to consider bills, committee reports, and amendments to bills. When the committee of the whole finishes work for the day, it "rises and reports" the actions it took in that capacity. The committee of the whole report is then subject to adoption by the full house or senate, voting on second reading.

Amendments are sometimes proposed to amend the committee of the whole report. These amendments are usually prepared by the amendment clerk, but drafters are sometimes asked to assist. In the house, an amendment to the committee of the whole report can only indicate that a previously offered amendment passed or did not pass. But in the senate, a member may offer an amendment to the committee of the whole report to show that an amendment that was not offered in debate did pass. Therefore, the amendment might contain new material, for which the amendment clerk might request the drafter's assistance.

3.5 Single Subject – Original Purpose – Title Amendments

When an amendment is prepared, the drafter should always check to ensure that the amendment does not change the **original purpose** of the bill, which is prohibited by section 17 of article V of the state constitution, and that it does not violate the **single-subject rule** set out in section 21 of article V of the state constitution.

Article V, section 17 reads as follows:

> **Section 17. No law passed except by bill - amendments.** No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

Article V, section 21 of the state constitution is quoted and discussed in the portion of this manual relating to the drafting of bill titles. See section 2.1.1 of this manual. When considering title questions, the drafter should keep both of these provisions in mind.

The drafter may amend the title of a bill to include subject matter added to the bill by amendment so long as that subject matter is "germane" to the original subject of the bill and

does not change the original purpose of the bill.[1] The Colorado Supreme Court held in *In re Amendments of Legislative Bills*, 19 Colo. 356, 35 P. 917 (1894), that the title of a bill may be so amended as to cover the original purpose of the bill as extended by amendments. For example, if an appropriation is added to a bill, the title should be amended to add the correct appropriation trailer; for example, "AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.".

The single subject of the bill generally is expressed in the phrase preceding the first comma. Everything after the first comma is referred to as the "trailer". The function of the trailer is simply to give more complete notice and a clearer explanation of the specific contents of the bill. So, for example, a bill titled "CONCERNING FRUIT, AND, IN CONNECTION THEREWITH, PROVIDING FOR THE REGULATION OF APPLE GROWERS AND FOR A TAX ON THE SALE OF ORANGES" could be amended to include regulation of grapefruit growers, with a corresponding addition of "AND GRAPEFRUIT GROWERS" to the title after "APPLE GROWERS". In this case the single subject is "fruit", both before and after the addition of the references to grapefruit growers, and the trailer gives notice of these additional references. The inclusion of grapefruit grower regulation is consistent with the single subject and does not change the original purpose.

The General Assembly closely adheres to an unwritten rule that a title may not be amended to broaden the subject matter of the bill as introduced. This rule has developed as a method of ensuring that the single-subject and change-of-purpose provisions of the state constitution are not violated. Note that strict compliance with this rule could result in a challenge to the amended title used in the preceding example; it could be argued that the addition of "grapefruit growers" broadens the title. The counter-argument would be that, because one of many available subcategories of fruit growers, i.e., apple growers, was already addressed by the bill, the addition of one more subcategory, grapefruit growers, does not materially increase the intended scope of the legislation.

A title may be narrowed by adding words of limitation to the subject. Occasionally, members or drafters attempt to narrow a title by inserting the specific C.R.S. sections or subsections to be amended by the bill, but this approach may not actually narrow the title for two reasons: First, there is no guarantee that the section or subsection won't be amended to include items unrelated to the original purpose of the bill. Second, if a list of specific C.R.S. sections is added to the trailer, the effect will be only to help explain, albeit clumsily, the effect or purpose of the bill rather than to limit the subject matter. So before citing a statutory section or an act in the title as a method of narrowing the title, the drafter should consult with the team leader or revisor.

Note: It appears that the constitutional provisions would not be violated if an amendment made in the first house to limit the subject of a title is removed or the title is broadened by the second house so long as the second house does not broaden the original subject of the bill as introduced.

[1] For more on "What is Germane," see Appendix F of this manual.

While bill titles *can* be amended and in many cases *should* be amended to give notice as to what will be contained in a bill after it is amended, drafters should exercise caution in making title amendments. Title amendments and related questions about whether or not an amendment fits within the single subject or violates the restriction on change of purpose involve legal interpretations that can dramatically affect the legislative process. A presiding officer may rule amendments out of order if the presiding officer determines that the amendments violate either provision. Amendments that violate either provision may subject the bill to a legal challenge. The drafter should always consult with a team leader or with the Director when the drafter has concerns about the single subject or original purpose or about a title amendment.

The single-subject and change-of-purpose provisions cited in this chapter apply only to bills; resolutions and memorials are not subject to the same requirements but there is no harm in following them if the sponsor of a resolution or memorial wishes to do so. In addition, pursuant to section 1 (5.5) of article V of the state constitution, adopted at the 1994 general election, the single-subject rule applies to initiated measures to amend the Colorado constitution or statutes.

For additional information concerning the single-subject rule and the original-purpose limitation, see Appendix F of this manual, which includes portions of an Office research memorandum titled "Bills to Contain Single Subject"; an NCSL Legisbrief that discusses "What is Germane?"; and a memorandum concerning amendment and title questions.

3.6 Checking Amendments

If a bill is amended by a committee of reference or on second or third reading, the publications team will send a "To Do" e-mail message to the drafter indicating that the bill has been amended. If the bill has been amended by a committee, the drafter compares the preamended version that has been prepared by the enrolling room with the committee report and the printed or reengrossed bill to ensure that all changes have been correctly incorporated. If the bill has been amended on second or third reading, the drafter reviews the appropriate version of the bill (engrossed, reengrossed, revised, or rerevised), which should contain all of the committee amendments plus the floor amendments.

The purpose of checking the amendments is to identify errors or inconsistencies that may have occurred in the course of amending or enrolling the bill. While a drafter may be tempted to conclude that the amendments "must be fine" since the drafter drafted the amendments, the drafter needs to realize that, in many cases, amendments are altered at the time of adoption. In addition, errors sometimes occur because of the haste in preparing rush amendments. One way to think about the task of checking amendments is that the drafter should devote the *same* care and attention to checking the bill as was devoted to drafting and preparing the bill for introduction. Checking amendments serves as a quality-control check on the work not only of the drafter but of everyone involved in the legislative process.

The drafter should look at the following things when checking amendments:

- Was the amendment properly enrolled? In other words, was the amendment as adopted inserted in the proper place in the bill?
- Were lines of text inadvertently dropped?
- Are terms used consistently? Did the amendment use a different phrase or term for something that is defined in the bill in a definition section?
- Was gender-specific language inserted that should be gender-neutral?
- Check the effective date section. If the effective date section includes different effective dates for various provisions of the bill, check to see that the effective date is still accurate and that any sections mentioned in the effective date are still in the bill. Pay close attention to the effect on the effective date section of amendments that remove or add sections to a bill.
- If the bill has an effective date clause and a safety clause and has different effective dates for various provisions of the bill, the safety clause and the effective date clause must take effect at least as early as any other section in the bill.

Correct Example:

> **SECTION 5. Effective date.** (1) This section and sections 3 and 6 of this act take effect upon passage and the remainder of this act takes effect July 1, 2020.
>
> **SECTION 6. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety or for appropriations for the support and maintenance of the departments of the state and state institutions.

- Sometimes amendments add or remove the safety clause and substitute a petition clause, or vice versa. These changes need to be reviewed to be sure that the drafter used the correct language and that the change does not create a timing issue. Check the entire bill for repeals or effective dates occurring before the end of the 90-day period for turning in a petition. If this occurs in a bill, the bill should have a safety clause.
- Pay close attention to applicability clauses. A bill should not have an applicability clause that conflicts with a stated applicability within the text of the bill. Such an ambiguity might result in a court construing the applicability in a way unintended by the sponsor or the General Assembly. Either the language should be identical in both places or the applicability should be stated in the text and removed from the applicability section.

- If a bill does not have a safety clause, any effective dates within the bill must occur at least ninety days after the last day on which the current legislative session could end.
- If the amendment removes part but not all of the changes to a particular C.R.S. section, is the amending clause for the C.R.S. section still accurate?
- If items have been renumbered or relettered in the bill because something was deleted or added, were the internal references contained in the bill also renumbered or relettered?
- If an amendment repealed, renumbered, or relettered a provision of current law, are new conforming amendments needed?
- Did the amendment add something to the bill that is not in the single subject of the bill?
- Did the amendment remove a section of the bill that is mentioned in the trailer of the bill title and fail to amend the "trailer" portion of the title?
- Are there misspellings?
- Are legal issues raised by the amendment? Did the amendment add something that arguably is unconstitutional or is in conflict with another statute?
- Are there internal inconsistencies in the bill?

Errors in bills can be fixed one of two ways: By correction schedule ("C.S.") or by amendment. If the mistake is minor, such as a misspelling or an incorrect amending clause, chances are it can be fixed by C.S. In this case the drafter should simply note the error in the comment section of the "To Do" response sent back to the publications team. Items noted on the correction schedule will be fixed at the time the bill is enrolled. More substantive problems, however, cannot be fixed by C.S., so in the case of anything other than an obviously minor technical error, the drafter should consult with the publications team about the issue.

If the problem cannot be fixed by C.S., the drafter should explain the problem to the sponsor of the bill and discuss correcting the problem by amendment. Be aware that the sponsor may have reasons for not wanting to fix the problem immediately. For example, if the bill is controversial and the final vote is likely to be close, the sponsor may not want to ask permission to offer a third reading amendment but instead wait until after introduction in the second house and fix the problem there. Or, if the bill is in the second house, a bill sponsor might not want to fix a problem with a second or third reading amendment and risk having the bill go to conference committee. The drafter should consult with the sponsor and present the various options for addressing the issue and let the sponsor decide how he or she wants to proceed. If time is of the essence, the drafter may want to prepare suggested amendment language ahead of time.

Another option may be correcting the problem with an amendment to the annual Revisor's Bill. However, the drafter should consult with the publications team or the Revisor of Statutes about

whether a particular matter is something that can be fixed in the Revisor's Bill. Substantive changes cannot be done through the Revisor's Bill.

Some amendment samples appear below. For additional examples, see Appendix C of the drafting manual.

3.7 Example Committee Amendment

SB256_L.013
SENATE COMMITTEE OF REFERENCE AMENDMENT
Committee on Education.
SB09-256 be amended as follows:

Amend printed bill, page 14, strike line 24 and substitute "IMPROVE STUDENT ACHIEVEMENT.".

Page 14, line 25, strike "(a)".

Page 15, strike lines 2 and 3 and substitute "SECTION SHALL PROVIDE A PLAN FOR USE OF THE FUNDS TO THE STATE BOARD BEFORE HOLDING AN ELECTION".

Page 15, strike lines 5 through 25.

** *** ** *** **

LLS: George Burdell x2045

3.8 Example Floor Amendment

HB1205_L.008 Amendment No. _____

HB09-1205

HOUSE FLOOR AMENDMENT

Second Reading BY REPRESENTATIVE Pace

Amend printed bill, page 6, after line 14 insert:

"(6) IF THE INTERNET-BASED VOTING PILOT PROGRAM IS SUCCESSFUL FOR THE GENERAL ELECTION HELD IN 2012, THE SECRETARY OF STATE SHALL IMPLEMENT AN INTERNET-BASED VOTING SYSTEM FOR ALL COLORADO CITIZENS. IF THE PROGRAM IS UNSUCCESSFUL FOR THE 2012 GENERAL ELECTION, THIS ARTICLE 5.5 IS REPEALED, EFFECTIVE JULY 1, 2013.".

** *** ** *** **

LLS: George Burdell x2045

3.9 Example Committee Amendment with Repetitive Amendments

HB1262_L.001

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.

HB16-1262 be amended as follows:

Amend printed bill, strike "PRIVATE SECURITY COMPANY" and substitute "GOVERNMENTAL AGENCY" on: **Page 2**, lines 8 and 10; **Page 3**, lines 4, 9 and 10, and 16 and 17; **Page 4**, lines 9 and 10, 11 and 12, 15 and 16, 21, and 24; **Page 5**, line 23; **Page 6**, lines 1, 7, 9, and 14 and 15; **Page 7**, line 7, 9, 13, 17, 18, 20, and 23 and 24; and **Page 8**, lines 15 and 16, 17 and 18, 21, and 26.

Strike "ALL FILES PERTAINING TO THE APPLICANT" and substitute "THE APPLICANT'S FILES" on **Page 3**, line 1; **Page 4**, lines 12 and 13; **Page 5**, line 24 two times; **Page 7**, lines 10 and 11; and **Page 8**, lines 18 and 19.

Strike "SEVEN" and substitute "TWENTY" on **Page 3**, line 14; **Page 4**, line 26; **Page 6**, line 12; and **Page 7**, line 22.

** *** ** *** **

LLS: George Burdell x2045

Chapter 4: Conference Committees and Conference Committee Reports

4.1 Introduction

If a bill is amended in the second chamber, the chamber of origin must act on the second chamber's amendments. The chamber of origin may do one of the following:

- **Concur** with the second chamber's amendments and repass the rerevised bill;
- **Adhere** to its position (i.e. declare that the reengrossed bill should be passed rather than the rerevised bill); or
- **Reject** the second chamber's amendments and request that a conference committee be appointed.

Once the chamber of origin makes its decision, the second chamber acts. If the chamber of origin adhered to its position, the second chamber may request a conference committee. However, if the second chamber instead chooses also to adhere to its position (i.e. declares that the rerevised bill should be passed rather than the reengrossed bill), the bill is deemed lost.

A **conference committee** is the method by which the 2 chambers attempt to resolve the differences between the reengrossed bill and rerevised bill. The second chamber's amendments are the basis of this difference and are therefore the only matters that may be considered by a conference committee. (There is an exception, however; a conference committee may be given permission to consider matters "beyond the scope of the differences.")

A conference committee consists of 6 legislators – 3 members per chamber (2 from the majority party, 1 from the minority party).

Conference committees are appointed pursuant to Joint Rule No. 4 of the Senate and House of Representatives, shown in relevant part below:

Joint Rules of the Senate and House of Representatives

4. Conference Committees

(a) In any case of difference between the two houses upon any measure, and prior to adoption of a motion to adhere by a majority of those elected to either house, either house may request a conference and appoint a

committee for that purpose and the other house shall also appoint a similar committee.

(b) Each such committee shall consist of three members of the house appointing the same, with a chairman designated, and the two committees jointly shall constitute a conference committee. Notwithstanding any rule of the House of Representatives or any rule of the Senate to the contrary, one of the three members of such committee appointed by each house shall be a member of the minority party of that house and shall be appointed by the minority leader of that house. A majority of the members of each committee appointed by each house shall be necessary to approve a majority report of any conference committee submitted to the General Assembly.

(b.5) A minority conference committee report shall be drafted by the Office of Legislative Legal Services upon the request of any member of a conference committee. No minority conference committee report shall be considered in either house unless it is approved by one member of the conference committee from each house.

(c) The conference committee shall meet at such time and place as shall be designated by the chairman of the committee on the part of the house requesting such conference and said chairman shall preside over the meetings of the conference committee. The conference committee shall be attended by a staff member of the Office of Legislative Legal Services and by a staff member of the Legislative Council. The conferees shall confer fully on the reasons of their respective houses concerning the differences between the two houses on the measure before them.

(d) With the consent of a majority of members elected to each of the two houses, the conference committee may report on matters beyond the scope of the differences between the two houses; otherwise the committee shall report only on matters directly at issue between the two houses.

(e) When a conference committee has reached a decision, the staff member from the Office of Legislative Legal Services shall draft a conference committee report reflecting the agreements of the committee. Every conference committee report shall be in writing.

(f) and (g) [Concern action to be taken on conference committee reports.]

(h) [Concerns correction of an error, conflict, or inconsistency in a report by means of a second report.]

(i) When a conference committee has met, reached a decision, and instructed the Office of Legislative Legal Services' staff to prepare a report, the signing of the report by the committee members shall constitute approval of the report and ratification of the decision made by the conference committee. No report which includes matters beyond the scope of the differences between the two houses shall be signed until consent to report on such matters has been given in accordance with subsection (d) of this Joint Rule.

Note: Joint Rules Nos. 5, 6, 7, and 8 also concern conference committees and the reports of those committees. Drafters should be familiar with these rules, but they are not essential in the actual drafting of conference committee reports.

A conference committee may consider matters **within the scope of the differences** (i.e. the differences between the reengrossed bill and rerevised bill). However, pursuant to Joint Rule No. 4 (d), the conference committee, if given permission via the consent of a majority of the members of each chamber, may consider matters **beyond the scope of the differences**. In this case, a conference committee may amend the entire bill, including adding new provisions or rewriting the bill (in the form of a SEBEC amendment), so long as any new material concerns the bill's original subject matter. Technical amendments to a bill are subject to the same "scope of the differences" considerations as substantive amendments.

Note: Joint Rule No. 4 (i) permits a conference committee to consider matters beyond the scope of the differences before permission is granted, but the conference committee must obtain permission before signing a conference committee report including such matters.

The outcome of a conference committee is detailed in a **conference committee report**. The report indicates whether the reengrossed or rerevised bill is being adopted and includes any additional amendments the chambers agree to make to the bill.

If a conference committee report contains any errors, the original report cannot be directly amended to correct the errors; a second report must be drafted [see Joint Rule No. 4 (h)]. Therefore, it is very important that conference committee reports use appropriate headings and standard language and go through editing and revision.

A conference committee may be unable to agree on a course of action. In this instance, the conference committee report will include the committee's request to be dissolved and indicate whether or not the committee requests to be replaced by a **second conference committee** composed of different members. No more than 2 conference committees can be formed for a bill.

See the following explanations, as well as the examples contained in Appendix D of this manual, of various conference committee situations:

- If a conference committee decides to accept the reengrossed bill or rerevised bill without any additional changes, the conference committee report may simply indicate which version of the bill to adopt. As a procedural alternative, however, the conference committee may opt to dissolve. Then, if the rerevised bill is being adopted, the first chamber concurs with the second chamber's amendments, or, if the reengrossed bill is being adopted, the second chamber recedes from its amendments. The appropriate version of the bill is then repassed. (See Joint Rules Nos. 5 and 6.)

- If the rerevised bill is the result of a SEBEC amendment, the entire bill is considered to be "within the scope of the differences." In this instance, the view of the OLLS is that the conference committee may add new provisions to, or completely rewrite, the bill (so long as any new material concerns the bill's original subject matter) without each chamber obtaining permission to go "beyond the scope of the differences." If the conference committee does completely rewrite such a bill, the conference committee report does not need to indicate scope.

- If a conference committee wants to amend different portions of the same CRS section, with one amendment to the section "within the scope of the differences" and another "beyond the scope of the differences," the drafter of the conference committee report should, if possible, sever the amendments by writing 2 amending clauses to specify which amendment is "within the scope of the differences" and which is "beyond the scope of the differences." However, if it is confusing or difficult to sever the amendments, a drafter should include both amendments in the "beyond the scope of the differences" portion of the report and explain to the conference committee that this was done for ease of comprehension.

- If the bill title is different between the reengrossed bill and rerevised bill, the conference committee report should include the title of the version of the bill being adopted in the report.

4.2 Drafting a Conference Committee Report

4.2.1 Form of the Report

Conference committee reports often include amendments to either the reengrossed bill or rerevised bill. Reports also feature a combination of headings, standard language, and formatting elements based on the nature of the conference committee's decisions about the bill. Sample

conference committee reports are contained in Appendix D of this manual, and the drafter should carefully follow the form of the appropriate sample.

4.2.2 Attending Meetings

As soon as a conference committee is declared for a bill, a **conference committee packet** is assembled (typically by an LE on the relevant subject matter team). These packets are delivered to the front office after a conference committee's work is completed. The drafter of the bill will be informed when and where the conference committee will meet, and the drafter or a substituting OLLS attorney should attend each of the conference committee's meetings [see Joint Rule No. 4 (c)]. Copies of both the reengrossed and rerevised bill are included in each packet and should be brought to each meeting.

A conference committee meeting requires active participation by the drafter, who should sit at the table with the conference committee members. The drafter should be prepared to appropriately clarify and advise on any substantive questions or matters of procedure for the committee.

4.2.3 Preparing a Draft Conference Committee Report

A drafter will prepare one or more drafts of a conference committee report for the conference committee to consider, multiple copies of which are included in a conference committee packet for distribution to conference committee members during meetings. To ensure that a draft report is not mistaken for a final report and erroneously signed by the conference committee members, a draft report should feature a draft stamp, and the signature lines at the end of the draft report should be deleted or marked through.

4.2.4 Signing the Final Report

The drafter of a conference committee report is responsible for arranging for each conference committee member to sign the final report. Each member of a conference committee must be offered the opportunity to sign the report, including members who voted against adopting the report and members who were absent from the meeting at which the final report was adopted. A majority of conference committee members' signatures (at least 2 per chamber, totaling 4 out of 6) are needed in order for a conference committee report to be adopted.

Because a conference committee may have requested multiple drafts of a conference committee report, it is in the drafter's best interest to bring to committee meetings one "final" version (i.e. version with signature lines) of each draft that the committee may sign. This helps prevent the need to track down individual conference committee members for signatures outside of a meeting.

Signature lines are divided by chamber into 2 columns, 3 lines apiece, that must be signed in a specific order (see 4.2.6 below). It is helpful to either lightly pencil each member's name below the appropriate signature line or write each member's name on a removable arrow sticker that points to the appropriate signature line.

4.2.5 Filing the Adopted Report

Once a final conference committee report is signed by enough conference committee members to be adopted, the following must be completed:

- Make 4 copies of the signed report for filing with the Senate and House of Representatives:
    - File 2 of these copies, as well as the signed original, with the chamber where the bill did not originate (i.e. Senate bills are filed with the House, and House bills are filed with the Senate); and
    - File the 2 remaining copies with the bill's chamber of origin.

4.2.6 Guidelines for Matters of Form

- The bill number must be correct and consistent throughout;
- Appropriate headings and standard language must be used;
- No line numbers should appear on the sides of pages;
- Signature lines must never appear on a page by themselves;
- Signatures for members of the bill's chamber of origin must be listed in the left column, and signatures for members of the opposite chamber must be listed in the right column;
- The top 2 signature lines of each column are for the majority party members of each chamber, and the chair of the committee should always take the highest line of the appropriate column;
- The bottom line of each column is for the minority party member of each chamber; and
- No "white out" changes or written insertions should be made to a printed original conference committee report.

4.3 Procedural Aspects of Conference Committees

The Joint Rules, as well as the respective rules of the Senate and House of Representatives, set forth a number of additional requirements and procedural limitations on conference committees, including limiting the options for action depending on the particular stage a bill is in. See Appendix D of this manual for charts delineating the options for conference committees for Senate or House bills based on the stage of proceedings of a particular bill.

Chapter 5: Special Rules and Techniques of Drafting and Grammar and Style

5.1 Joint Rule 21

Section 24-70-204 (2), C.R.S., specifies that bills that amend existing law must show the specific changes to the law in the manner provided in the joint rules of the Senate and House of Representatives. Joint Rule No. 21 (a) addresses the manner of showing changes to the law that are made by a bill. The rule requires that, in every bill amending existing law, the bill shows the specific changes to existing law by using small capital letters and strike type (referred to as "cancelled letter type" in Joint Rule No. 21). At the discretion of the Office, when amendments are so extensive or compliance with the method of showing changes is not feasible, the drafter may use the repeal or repeal and reenact method rather than the small capital letters and strike type method. The pertinent parts of Joint Rule No. 21 provide:

> (a) Bills which would amend existing law shall show the specific changes to be made to existing law in the following manner:
>
> (1) All new material shall be capitalized.
>
> (2) All material which is to be omitted from existing law shall be shown in its proper place in cancelled letter type; such material, however, shall not be deemed a part of the bill.
>
> (3) The bill as printed shall show the following explanation at the bottom of the first page: 1) "Capital letters indicate new material to be added to existing statute;" 2) "Dashes through words indicate deletions from existing statute."
>
> The foregoing shall not apply to those bills or sections of bills which repeal or repeal and reenact existing law with amendments, if compliance is not feasible in the discretion of the Office of Legislative Legal Services.

5.1.1 Capitalization Requirements

New material is always shown in small capital letters.

The text of new material, regardless of length and even if it comprises an entire section, part, or article, is always indicated in small capital letters. New material is not shown in lower case in any

part of a bill. The repeal and reenactment, recreation and reenactment, and enactment of new titles, articles, parts, sections, subsections, and smaller provisions should always appear in small capital letters.

Several examples of the use of small capital letters as required in Joint Rule No. 21 follow.

5.1.1.1 Amending Existing Law and Showing Changes by Use of Small Capital Letters and Strike Type

> **SECTION #.** In Colorado Revised Statutes, **amend** 10-16-129 as follows:
>
> **10-16-129. Costs of administration.** Annually, on March 1, every corporation subject to ~~the provisions of~~ this article 16 shall pay ~~annually on March 1~~ to the commissioner ~~to defray the cost of administering and implementing the rate review procedures established pursuant to sections 10-16-125 to 10-16-128~~ an amount equivalent to ~~five cents per person enrolled in~~ ONE-FIFTH OF ONE PERCENT OF THE PREMIUMS COLLECTED OR CONTRACTED FOR ON the health service plans of ~~such~~ THE corporation ~~on December 31 of~~ IN the prior CALENDAR year. THE PURPOSE OF THE PAYMENT TO THE COMMISSIONER IS TO DEFRAY THE COST OF ADMINISTERING AND IMPLEMENTING THE RATE REVIEW PROCEDURES ESTABLISHED PURSUANT TO SECTIONS 10-16-125 TO 10-16-128.

5.1.1.2 Amending Existing Law by Adding a New Article, Part, Section, Subsection, Etc. - New Material Is Shown in Small Capital Letters

> **SECTION #.** In Colorado Revised Statutes, 24-72-706, **add** (4) as follows:
>
> **24-72-706. Sealing of criminal conviction and criminal justice records - processing fee - definition - repeal.** (4) IF A COURT ORDERED A PERSON'S CRIMINAL JUSTICE RECORDS SEALED PURSUANT TO THIS PART 7 AND THE COLORADO BUREAU OF INVESTIGATION HAS NOT SEALED THE PERSON'S CRIMINAL JUSTICE RECORDS IN ITS CUSTODY ON OR BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (4), THE BUREAU SHALL WAIVE THE RECORD SEALING COSTS ASSESSED BY THE BUREAU.

5.1.1.3 Amending Existing Law by Adding a New Subdivision to a Section, Combined with Amendments to Other Subdivisions of the Same Section – the New Subdivision Is Shown in Small Capital Letters

> **SECTION #.** In Colorado Revised Statutes, 39-26-102, **amend** (15); and **add** (2.7) as follows:

39-26-102. Definitions. (2.7) "DIRECT MAIL ADVERTISING MATERIALS" MEANS DISCOUNT COUPONS, ADVERTISING LEAFLETS, AND OTHER PRINTED ADVERTISING, INCLUDING ACCOMPANYING ENVELOPES AND LABELS.

(15) "Tangible personal property" means corporeal personal property. The term shall not be construed to include newspapers, as legally defined by section 24-70-102, or preprinted newspaper supplements ~~which~~ THAT become attached to or inserted in and distributed with such newspapers, OR DIRECT MAIL ADVERTISING MATERIALS THAT ARE DISTRIBUTED IN COLORADO BY ANY PERSON ENGAGED SOLELY AND EXCLUSIVELY IN THE BUSINESS OF PROVIDING COOPERATIVE DIRECT MAIL ADVERTISING.

5.1.1.4 Recreating and Reenacting Old Law - the Text of the New Material Is Shown in Small Capital Letters, Regardless of Length

SECTION #. In Colorado Revised Statutes, **recreate and reenact, with amendments,** 25-4-1410 as follows:

25-4-1410. Repeal of part. THIS PART 14 IS REPEALED, EFFECTIVE JULY 1, 2030.

5.1.2 Bold and Italics for New Numerals in Statutory Text

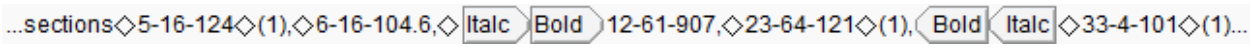
The Committee on Legal Services approved the use of bold and italics in bill language in 2018, and it is now mandatory for changes to statutory language in only the following two categories:

1. New numerals and symbols in a series; and
2. New numerals and symbols in a table.

The general rule is that new statutory language is shown in small capital letters. However, small capital letters are not noticeable with numerals and symbols, which cannot be capitalized. Therefore, when adding a new numeral in statutory text, either in a series of existing numerals or an existing table, the drafter must show the new numeral in bold and italics to clearly indicate that it is new. If a parenthesis or a dollar sign symbol is adjacent to the numeral, without a space, then the drafter should show that symbol in bold and italics too. Drafters should continue to show repealed numerals in strike type.

Bold and Italics Coding: The bold and italics coding operates the same as small capital letters coding; it should wrap around the numerals, which may include punctuation within and outside the new material. Do not include the spaces on either side. In addition, the bold code should be on the inside, touching the numeral, then the italics code on the outside. To achieve this, select bold first, then italics through the menu or key command.

... sections 5-16-124 (1), 6-16-104.6, ***12-61-907, 23-64-121 (1),*** 33-4-101 (1) ...



If these standards are not met exactly, it will not negatively impact enrolling or publications from a technical standpoint. While these are the standards by which drafters and editors should use bold and italics, it will not break the system if the bold and italics codes are swapped or if a comma isn't included.

The following are examples of how to show new numerals in different contexts:

5.1.2.1 New Numeral in a Series

5.1.2.1.1 Internal References: Sections and Subsections

11-35-101. Alternatives - requirements - definition. (1) The requirement of a surety bond as a condition to licensure or authority to conduct business or perform duties in this state provided in sections 5-16-124 (1); 6-16-104.6; 12-61-907; ***23-64-121 (1);*** 33-4-101 (1); 33-12-104 (1); ~~35-55-104 (1);~~ 37-91-107 (2) and (3); 38-29-119 (2); 39-21-105; 39-27-104 (2)(a), (2)(b), ***(2)(c),*** (2)(d), ***(2)(e),*** and (2.1)(a); and 44-20-413 may be satisfied by a savings account or deposit...

5.1.2.1.2 Internal References: Subsections

12-39-111. Grounds for discipline. (1) The board has the power to revoke, suspend, withhold, or refuse to renew any license in accordance with the procedures set forth in subsections (1), ~~(3)~~ ***(2),*** (4), ***(6),*** and (8) of this section.

5.1.2.1.3 Year

22-54-104. District total program - definitions. (3.5) Minimum per pupil funding is:

(a) For the ~~2015-16~~ ***2017-2018,*** 2018-19, 2019-20, and ~~later~~ ***2020-21*** budget years, the district's total program as calculated by ...

5.1.2.2 New Numeral in a Table

5.1.2.2.1 Table: Dollar Sign Separated by a Space

42-4-1701. Traffic offenses and infractions classified - penalties - penalty and surcharge schedule - repeal. (4) (a) (I) Every person who is convicted of a violation of this title 42 shall be fined as follows:

Section Violated	**Penalty**	**Surcharge**
42-2-101 (1) or (4)	$ 35.00	$ ~~10.00~~ ***12.00***
42-2-101 (2), (3), or (5)	15.00	6.00

42-2-104 (3.5)	***50.00***	***8.00***
42-2-105	~~70.00~~ ***80.00***	10.00

5.1.2.2.2 Table: Dollar Sign Attached

25-8-502. Application - definitions - fees - funds created - public participation - repeal. (1.1) For each regulated activity:

Facility Categories for Permit Fees	**Annual Fees**
(II) General permits:	
(E) Department of transportation (DOT)	~~$9,400~~ ***$9,750***
(F) Minimal discharge of industrial water	$630
(G) Low complexity	~~$820~~ ***$850***

5.1.2.3 When the Bold and Italics Rule Does Not Apply: New Language Is Clear from Context by Use of Small Capital Letters

Bold and italics only work if they are clear and convenient for the drafter and reader. The drafter should use best judgment in determining whether a new number is apparent through context in or around a series or table. As is standard practice, continue striking and re-adding language when needed for clarity, such as with the addition of an article or title number. Normal coding procedures apply.

5.1.2.3.1 Section Number Repeated to Show New Subsection Numbers

(k) The amount recaptured in accordance with ~~section 39-22-4705 (2)~~ SECTION 39-22-4705 (2), (3), AND (3.5).

5.1.2.3.2 Adding Final Number in a Series

(g) Has been convicted of or pled guilty or nolo contendere to a misdemeanor related to drugs or alcohol or a felony. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea is conclusive evidence of the conviction or plea. In considering the disciplinary action, the director is governed by sections 12-20-202 (5), 12-30-404, ~~and 24-4-105~~ 24-4-105, AND 24-5-101.

5.1.2.3.3 Updating Part Number

39-22-4703. Definitions. As used in this ~~part~~ PART 47, unless the context otherwise requires:

5.1.2.3.4 Updating Internal References

(b) Any form of identification indicated in ~~paragraph (a) of this subsection (19.5)~~ SUBSECTION (19.5)(a) OF THIS SECTION that shows the address of the eligible

elector shall be considered identification only if the address is in the state of Colorado..

5.1.3 Repealing Existing Law

The repeal of a subdivision of the C.R.S. is indicated by strike type unless the drafter determines that including the stricken language does not assist the reader in understanding the bill or the sponsor requests that it not be shown, in which case the repeal is indicated by a straight repeal clause.

5.1.3.1 Repeal Without Other Amendments

SECTION #. In Colorado Revised Statutes, **repeal** 25-4-1506 as follows:

25-4-1506. Repeal of part. ~~This part 15 is repealed, effective July 1, 1992.~~

5.1.3.2 Repeal Combined with Other Amendments to Same Section

SECTION #. In Colorado Revised Statutes, 18-9-201.5, **amend** (4); and **repeal** (3) as follows:

18-9-201.5. Scope of part 2. (3) ~~Nothing in this part 2 shall affect animal care otherwise authorized by law.~~

(4) Nothing in this ~~part 2 shall affect~~ ARTICLE 9 AFFECTS facilities licensed under the federal "Animal Welfare Act of 1970", 7 U.S.C. sec. 2131 et seq., as amended.

5.1.3.3 Straight Repeal (see section 2.5.4.5, Repealing Existing Law)

SECTION #. In Colorado Revised Statutes, **repeal** part 15 of article 4 of title 25.

5.1.4 Repealing and Reenacting Existing Law

Generally, even if the drafter is completely rewriting existing law, the drafter should show the text of the existing law in strike type followed by the text of the new law in small capital letters. However, if the existing law exceeds one page or one section in length or if the changes are so extensive as to make reading the bill with strike type and small capital letters very difficult, the drafter may repeal and reenact the existing law. In this case, the text of the existing law is not shown, and the new material is shown in small capital letters. The drafter should work with the sponsor to decide which method the sponsor prefers.

5.1.4.1 Showing Repealed Law

SECTION #. In Colorado Revised Statutes, 35-9-102, **amend** (21) as follows:

35-9-102. Definitions. (21) "Pesticide" means

~~(a) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses; and~~

~~(b) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant~~ A SUBSTANCE OR MIXTURE OF SUBSTANCES INTENDED FOR PREVENTING, DESTROYING, REPELLING, OR MITIGATING A PEST OR A SUBSTANCE OR MIXTURE OF SUBSTANCES INTENDED FOR USE AS A PLANT REGULATOR, DEFOLIANT, OR DESICCANT; EXCEPT THAT THE TERM "PESTICIDE" DOES NOT INCLUDE AN ARTICLE THAT IS A "NEW ANIMAL DRUG" AS DESIGNATED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION.

Note that in current law, the introductory portion to subsection (21) includes a colon after the word "means". In the example above, the colon is simply removed. As explained in section 5.1.6.4 of this chapter, the colon after the word "means" does not need to be shown in strike type in the bill.

5.1.4.2 Not Showing the Repealed Law - Repeal and Reenact

SECTION #. In Colorado Revised Statutes, **repeal and reenact, with amendments,** 35-10-111 as follows:

35-10-111. Record keeping. EACH COMMERCIAL, LIMITED COMMERCIAL, AND PUBLIC APPLICATOR SHALL KEEP AND MAINTAIN RECORDS OF EACH PESTICIDE APPLICATION IN THE FORM AND MANNER DESIGNATED BY THE COMMISSIONER ....

5.1.5 An Amended Provision Should Be Shown in Context

A primary consideration in preparing bills is to present changes to the law in a manner that facilitates clear understanding. When deciding how much context to show, a drafter should consider whether the context can be provided in other ways, such as in the bill summary or by a sponsor's explanation when presenting the bill, and whether it is efficient to include existing law not being changed in the bill. However, a bill must always show the complete statutory subdivision that is being amended, and, if the subdivision is preceded by an introductory portion, the introductory portion must be included in the bill.

In the following example, the entirety of subsection (2) is shown in the bill because it is being amended. Subsection (1) is omitted from the bill. In this case, the drafter will include context in the bill summary explaining that the bill is changing the repeal date for the statewide

information and communication network, and the section headnote provides additional information to the reader.

> **SECTION #.** In Colorado Revised Statutes, 22-20-105.5, **amend** (2) as follows:
>
> **22-20-105.5. Statewide information and communication network - repeal.**
>
> (2) This section is repealed, effective July 1, ~~1993~~ 2042, unless the general assembly acting by bill continues this section.

This second example also shows the subdivision being amended, (1)(s), and also shows the introductory portion that precedes the subdivision being amended, even though the introductory portion is not being amended and, thus, is not included in the amending clause.

> **SECTION #.** In Colorado Revised Statutes, 25-1-107, **amend** (1)(s) as follows:
>
> **25-1-107. Powers and duties of the department.** (1) The department has, in addition to all other powers and duties imposed upon it by law, the following powers and duties:
>
> (s) To establish and enforce standards for exposure to toxic materials ~~in the gaseous, liquid, or solid phase~~ that may be deemed necessary for the protection of public health;

5.1.6 Specific Applications of Joint Rule No. 21

5.1.6.1 Small Capital Letters Always Follow Strike Type

In applying the rule, first show the strike type if new material is to be substituted for the omitted material and then follow with the new material in small capital letters.

Correct Application:

> "The permit fee ~~shall be two~~ IS FOUR dollars."

Incorrect Application:

> "The permit fee IS FOUR ~~shall be two~~ dollars."

5.1.6.2 Addition to Unsubdivided Section

When adding a new subsection to a section that has no numbered subsections, designate the existing section as subsection (1), and then add the new material as subsection (2) in small capital letters. Numbered subsections, paragraphs, and so forth cannot be added if the existing statute to be amended does not already contain numbered subsections, paragraphs, etc.

When making this change, the amending clause must state that the entire section is amended, and all the new material in statute must be in small capital letters.

Example:

Section 30-11-103., C.R.S., is an undivided section in current law; there are no subsections:

> **30-11-103. Commissioners to exercise powers of county.** The powers of a county as a body politic and corporate are exercised by a board of county commissioners.

Section 30-11-103, C.R.S., as amended by bill to add a subsection (2), which requires making the existing law into a subsection (1):

> **SECTION #.** In Colorado Revised Statutes, **amend** 30-11-103 as follows:
>
> **30-11-103. Commissioners to exercise powers of county - property of county.** (1) The powers of a county as a body politic and corporate are exercised by a board of county commissioners.
>
> (2) A REAL OR PERSONAL ESTATE CONVEYED TO A COUNTY SHALL BE DEEMED THE PROPERTY OF THE COUNTY.

5.1.6.3 Changes or Additions to Section Headnotes

The example shown in section 5.1.6.2 also illustrates a point with respect to rewording or extending section headnotes. The headnote of section 30-11-103, C.R.S., before being amended, contained only the words "**Commissioners to exercise powers of county.**" When subsection (2) was added, the content of the section was extended, and the extension was reflected in the section headnote by adding the words "**property of county.**"

Do not use strike type or small capital letters when making changes to headnotes. The drafter need not follow Joint Rule No. 21 when changing or expanding a section headnote because section headnotes are not part of the legislative text. Many times, even though a section is amended or extended, the section headnote is comprehensive enough not to require change. The drafter should make any changes in section headnotes as short and as descriptive of the changes covered by the amendment as possible.

The drafter may not change a section headnote by amendment unless the drafter is also making substantive amendments to the text of the section. If necessary, the revisor of statutes may make editorial changes to section headnotes.

5.1.6.4 Punctuation Changes

Joint Rule No. 21 does not apply to changes in punctuation, since one obviously cannot capitalize a period, comma, or semicolon, and it is not the practice of the Office to show punctuation, standing alone, in strike type.

Correct Application:

> The applicant shall pay a fee of two dollars. ~~and~~ Any such copy of the record is prima facie evidence ....

Incorrect Application:

> The applicant shall pay a fee of two dollars~~,~~. ~~and any~~ ANY such copy of the record is prima facie evidence ....

In the example above, note that the correct application merely inserts the period in place of the existing comma. However, when punctuation is contained in a series of words in strike type, the strike type runs through the punctuation, as in this example: "The commission shall ~~receive, investigate, and pass upon~~ HEAR complaints."

5.1.6.5 Capitalization Changes

To change the capitalization of a word, either by capitalizing the first letter or lowercasing the first letter, it is not necessary to strike the original word and substitute the new word in small capital letters. Capitalization is considered an editorial change and can simply be changed.

Correct Application:

> Simply change "the national fire code" to "the National Fire Code"

Incorrect Application:

> the ~~national fire code~~ NATIONAL FIRE CODE

5.1.6.6 Parts of Words

Do not apply strike type or small capital letters to just part of a word. Use strike type through the entire word and small capital letters for the new word:

Correct Application:

> The ~~commissioner~~ COMMISSIONERS have the power ....

Incorrect Application:

> The commissionerS have the power ....

5.1.6.7 Proposed Constitutional Amendments

Proposed amendments to the Colorado Constitution are written as concurrent resolutions rather than bills, either Senate or House concurrent resolutions depending on where introduced. Pursuant to the following rules of the House and Senate, Joint Rule No. 21 applies to indicate the proposed changes in concurrent resolutions:

Rules of the House of Representatives
26. Resolutions and Memorials

(b) House concurrent resolutions as well as Senate concurrent resolutions shall be treated in all respects as bills ...

Rules of the Senate
30. Resolutions and Memorials

(a) (2) Senate concurrent resolutions, as well as House concurrent resolutions, shall be treated in all respects as bills .... All other provisions of these rules or the joint rules applying to bills shall also apply to concurrent resolutions.

5.1.6.8 Approval as to Form by the Office

Joint Rule No. 21 (d) states:

Joint Rules of the Senate and House of Representatives

21. Bills Which Amend Existing Law

(d) All bills before being introduced shall be submitted to the Office of Legislative Legal Services for approval as to form pursuant to the provisions of this rule.

Bill drafters in the Office comply with Joint Rule No. 21 when drafting bills. Bills drafted by outside sources very often do not comply with the rule or the rule is not correctly applied. When reviewing bills from outside sources, it is the duty of the drafter to apply the rule and to make other necessary changes as to form and as to citations, capitalization of words, and so forth.

5.2 Subsections – Definitions Sections

Subsections almost always consist of complete sentences (see section 5.2.1 of this chapter for a discussion of subsections in definitions sections). If a section consists of an introductory clause ending with a colon and is followed by a series of numbered or lettered subdivisions, use a numbered subsection with paragraphs as follows:

Correct Application (introductory portion numbered (1), followed by lettered paragraphs):

> **11-8-105. Pledge of assets.** (1) A state bank may pledge its assets to:
>
> (a) Enable it to act as agent for the sale of obligations of the United States; and
>
> (b) Secure borrowed funds.

Incorrect Application (introductory portion not numbered):

> **11-8-105. Pledge of assets.** A state bank may pledge its assets to:
>
> (1) Enable it to act as agent for the sale of obligations of the United States; and
>
> (2) Secure borrowed funds.

Partial sentences contained in subdivisions following a colon end with a semicolon; complete sentences in these subdivisions are punctuated with a period. In the example below, paragraph (a) has two sentences, so it ends with a period; paragraph (b) is not two sentences, so it ends with a semicolon; and paragraph (c) is the end of the list, so it ends in a period, regardless of the number of sentences:

> **10-2-907. Required contract provisions - reinsurance managers.** (1) The contract ~~shall~~ MUST, at a minimum, contain provisions that incorporate all of the following:
>
> (a) The reinsurer may terminate the contract for cause upon written notice to the RM. The reinsurer may suspend . . . the cause for termination.
>
> (b) The RM shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, and remit all funds due under the contract to the reinsurer on not less than a monthly basis;
>
> (c) THE RM SHALL HOLD all funds collected for the reinsurer's account ~~shall be held by the RM~~ in a fiduciary capacity in a bank that is a qualified United States financial institution as defined in section 10-1-102 (17). The RM may retain no more than three months' estimated claims payments and allocated loss adjustment expenses. The RM shall maintain a separate bank account for each reinsurer that ~~such~~ THE RM represents.

5.2.1 Subsections in Definitions Sections

Definitions sections are slightly different because the introductory portion is not designated as a subsection. Each definition has a separate subsection number; each subsection ends with a period, not a semicolon; and the definitions are alphabetized. Note the standard introductory language for a definitions section: "As used in this title # [article #, part #, section], unless the

context otherwise requires:". For a definitions section that includes many different examples, see section 19-1-103, C.R.S. New words are inserted in alphabetical order, and decimal points (.1 through .9) are used to provide an appropriate subsection number.

If a new word must be inserted before the word that is defined in subsection (1), the first definition should be stricken with strike type, the new language inserted in its place in small capital letters, and the original definition should be added as a new subsection, or the first definition may be repealed and reenacted as a subsection between (1) and (2), for example (1.5). See Appendix B.10 of this manual for examples.

The drafter should not include substantive law in a definitions section. Definitions should be just that - definitions.

Part 4 of article 4 of title 2, C.R.S., includes definitions that apply to every statute. For example, it is not necessary to define "person" in a bill; section 2-4-401 (8), C.R.S., already defines "person," and the definition applies to every statute. If the drafter wants a different definition for "person," then it is appropriate to redefine "person" in the bill.

5.3 Amendments or Additions to the Same Section or Article in Two or More Bills

A member might request a bill that amends the same section or adds new material, identically numbered, as a bill already drafted or introduced. If the two bills are not intended to accomplish the same result, but happen to amend the same area of statute, the drafter must draft each bill according to the statutes as they exist and not in relation to another bill that has not yet been enacted (see below). If the bills are intended to accomplish the same result, it may be appropriate to amend the bill already drafted or introduced instead of drafting a new bill. Beware of title and single-subject questions in this regard and if the earlier bill has not been introduced, resolve any issues of confidentiality before revealing information about one member's bill request to another member.

If two or more bills amend the same statutory sections in a manner that may cause a conflict if all of the bills pass, the Revisor of Statutes notifies the bill sponsors and committee chairs of these potentially conflicting bills so that the bill sponsors may work with the bill drafters to draft appropriate amendments. When two or more bills enacted at the same session amend the same section, the Revisor of Statutes attempts to harmonize the amendments when preparing the Colorado Revised Statutes. If the amendments are irreconcilable, section 2-4-206, C.R.S., governs which amendment prevails. If two or more bills enacted at the same session create new statutory subdivisions using the same numbers or letters, the Revisor of Statutes renumbers the subdivisions as part of the publications process.

Sometimes it is necessary to amend a section that has been amended or enacted in a bill adopted earlier in the same legislative session. The following are examples of the amending clauses for this type of amendment:

> **SECTION #.** In Colorado Revised Statutes, 16-7-403, **amend as amended by House Bill 97-1254** (1) as follows:
>
> **SECTION #.** In Colorado Revised Statutes, **amend as amended by House Bill 97-1320** 17-22.5-304 as follows:
>
> **SECTION #.** In Colorado Revised Statutes, 37-90-137 **amend as added by Senate Bill 97-5** (8) as follows:

For additional examples of these types of amending clauses, see Appendix B.16 of this manual.

5.4 Rules of Statutory Construction

Every drafter should read article 4 of title 2, C.R.S., for general rules of statutory construction. Part 1 explains construction of words and phrases, part 2 concerns construction of statutes, part 3 deals with amendatory statutes, and part 4 includes definitions. In addition, drafters should read section 2-5-113, C.R.S., concerning the effect of the enactment of Colorado Revised Statutes 1973 and the use of editorial material in construing statutes.

In addition to those statutory sections, *Sutherland Statutes and Statutory Construction* is a good source of information and commentary concerning issues such as Legislative Power, Legislative Organization and Procedure, Legislative Form and Mode, Legislative Ability, Statutory Interpretation, and Application of the Rules of Statutory Construction in Selected Areas of Substantive Law. The Office has a set of Sutherland's available for use by Office staff.

Finally, drafters are encouraged to read the articles published on LegiSource concerning statutory construction. These articles are available by searching LegiSource using the key term "statutory construction".

5.5 Avoiding Inadvertent Omissions from Existing Law

When drafting a bill, the drafter should never type the existing law into the bill. Rather, the drafter should use the alt-M macro to retrieve an existing statute from the Office's official

database and include it in the bill draft.[1] And even when using the macro to retrieve current statute, the drafter should compare the retrieved statute with the printed statutes to be sure all of the pertinent subdivisions of a statutory section were copied into the bill, especially the introductory portions to subsections, paragraphs, and subparagraphs.

Omitting any portion of an existing statute that is identified in an amending clause as being changed presents a serious problem. If the bill is challenged, a court may construe as repealed any wording omitted from an existing statute that is being amended.

This is particularly important in reviewing a bill draft prepared by an outside source. The drafter should never rely on a document prepared by an outside source as being an accurate record of existing law. The drafter should retrieve the existing law from the Office's database, and the legislative editor should proof the bill draft against the actual statute. This is also important to remember when a drafter is asked to draft a bill that was introduced but did not pass in the previous year. The drafter should not copy and paste text from a previous year's bill into a new bill, as the language in those statutes may have been changed by a different bill in the previous year's session. Instead, the drafter should retrieve the existing law using the alt+M macro.

The drafter can also inadvertently omit language if the amending clause is inaccurate. The amending clause must identify **specifically** the statute or part of the statute to be amended. The following example illustrates how easily this very serious error can be made:

> **SECTION #.** In Colorado Revised Statutes, 22-14-106, **amend** (1) as follows:
>
> **22-14-106. Local education provider practices assessment - technical assistance - rules.** (1) (a) Each high priority and priority local education provider ~~shall~~ MAY conduct a practices assessment as described in subsection (2) of this section. Each high priority and priority local education provider's practices assessment, ~~shall~~ IF CONDUCTED, MUST consider community partnerships with state and local government agencies and community-based organizations and current practices and policies as they relate to different types of dropout students or students at risk of dropping out.

Section 22-14-106 (1), C.R.S., in existing law has four paragraphs lettered (a) to (d). In the draft, only subsection (1)(a) is amended and the remaining paragraphs are omitted entirely, although the amending clause states that all of (1) is to be amended. If this amendment was enacted as

[1] The database is updated after the session ends as part of the publications process, usually in late summer. If drafting a bill before the database is updated, for example, when drafting an interim committee bill or for the next session, the drafter should use the Red Book to determine whether the statute was updated in the preceding session. If the statute was not updated, the drafter can use alt+M, as described in this section. If the statute was updated, then the drafter should use the text from the session laws or bills from the prior session to include the correct statute in the bill.

drafted, subsections (1)(b) through (1)(d) of the existing law could be deemed repealed. The amending clause should have stated that 22-14-106 (1)(a) was to be amended.

The drafter should not rely on the legislative editors proofing a bill to find and correct these types of errors. Instead, each drafter should be certain to specifically identify the statutory subdivision being amended and check the bill draft and existing law carefully to ensure that none of the existing law has been omitted.

5.6 Internal References

5.6.1 References to Colorado Revised Statutes

In amending and repealing clauses, bill titles, bill summaries, and other nonstatutory provisions, except appropriation clauses, cite the Colorado Revised Statutes as "Colorado Revised Statutes". In appropriation clauses, use the abbreviation "C.R.S." when referring to the Colorado Revised Statutes. *See* section 24-75-112.5, C.R.S.

Before 2017, when referring to the Colorado Revised Statutes in the body of a statute, the abbreviation "C.R.S." was used when referring to a statutory provision *not* located in the same title as the section containing the reference. Starting in 2017, references to statutory provisions within the statutes do not use "C.R.S.", whether the reference is within the same title or not. When referencing a statute section in the text of another statute, refer, for example, to "section 5-6-301". However, in an amending clause, omit the word "section".

Example - Long Title:

> CONCERNING AN ORGANIZATIONAL RECODIFICATION OF TITLE 12 OF THE COLORADO REVISED STATUTES, AND, IN CONNECTION THEREWITH, LIMITING SUBSTANTIVE CHANGES TO THOSE THAT CONFORM SIMILAR PROVISIONS TO ACHIEVE UNIFORMITY, ELIMINATE REDUNDANCY, OR ALLOW FOR THE CONSOLIDATION OF COMMON PROVISIONS OR THAT ELIMINATE PROVISIONS THAT ARE ARCHAIC OR OBSOLETE.

Example - Nonstatutory Legislative Declaration:

> **SECTION #. Legislative Declaration.** The changes to section 24-1-104, Colorado Revised Statutes, in section 2 of the act are nonsubstantive and do not alter the powers of the general assembly.

Example - Bill Summary:

> **Committee on Legal Services.** Title 12 of the Colorado Revised Statutes relates primarily to the regulation of professions and occupations. In 2016, the General Assembly enacted Senate Bill 16-163, which authorized a multiyear project to recodify title 12. In 2017 and 2018, the General Assembly enacted numerous bills to relocate to other titles all laws that do not relate to the regulation of professions and occupations. Title 12 now generally contains only laws administered by the department of regulatory agencies (DORA) that regulate a profession or occupation.

Note: Drafters should only cite specific titles, articles, parts, or sections in bill summaries in the rarest of cases, as the reader of the bill summary will not know the context of the specific citation.

The changes to references to "C.R.S." specified in this section 5.6.1 that were implemented in 2017 are prospective. When a drafter, in amending a provision of current law, discovers a reference to "C.R.S.", the drafter should update the reference by striking the reference to "C.R.S." One thing drafters should keep in mind when updating current law that uses the pre-2017 references to "C.R.S." – those references were always set off by commas. When amending that language, drafters should check to be sure that the comma before the "C.R.S." is still needed. If not, the drafter should delete it.

Example - updating pre-2017 internal reference:

Original statute, prior to amendment:

> (I) Notify the board created in section 12-30-118 (1), C.R.S., of a physical illness.

How the amended language appears in the bill:

> (I) Notify the LICENSING board created in section 12-30-118 (1) ~~C.R.S.,~~ of a physical illness OR SUBSTANCE USE DISORDER.

5.6.2 References to C.R.S. Section Subdivisions

5.6.2.1 References Within the Same C.R.S. Section

Before 2017, references to a subsection, paragraph, subparagraph, or sub-subparagraph within the same C.R.S. section were given in a long format. For example:

> paragraph (a) of subsection (1) of this section

paragraph (a) of this subsection (1)

subparagraph (I) of paragraph (e) of subsection (1) of this section

sub-subparagraph (B) of this subparagraph (I)

Starting in 2017, when referencing a subsection, paragraph, subparagraph, or sub-subparagraph within the same C.R.S. section, write the references in a shorter format. For example:

same subsection	this subsection (1)
same paragraph	this subsection (2)(g)
same subparagraph	this subsection (4)(i)(III)
same sub-subparagraph	this subsection (3)(b)(V)(C)
different subsection	subsection (3) of this section
different paragraph	subsection (5)(d) of this section
different subparagraph	subsection (1)(f)(II) of this section
different sub-subparagraph	subsection (6)(c)(I)(A) of this section

When referencing multiple subsections, paragraphs, subparagraphs, or sub-subparagraphs, use one of the following templates:

subsections (x) **and** (y) of this section

subsection (x) **or** (y) of this section

5.6.2.2 References That Are in a Different C.R.S. Section

When making references that are in a different C.R.S. section, cite the section in its entirety with the specific subsection, paragraph, subparagraph, or sub-subparagraph placed after the section number. For example: "section 39-3-101 (1)(a)", "section 39-3-101 (1)(e)(I)", or "section 39-3-101 (1)(g)(I)(B)".

When referencing multiple subdivisions of a different C.R.S. section, use the singular "section." For example: "section 24-2-103 (1)(a), (1)(e), and (1)(f)."

The changes to internal references specified in this section 5.6.2 that were implemented in 2017 are prospective. The drafter should update existing internal references that are written in the old format; these references cannot be updated through the publications process. For example:

Original statute:

(1) (d) (II) Notwithstanding subparagraph (I) of this paragraph (d), [...]

Amended statute:

(1) (d) (II) Notwithstanding ~~subparagraph (I) of this paragraph (d)~~ SUBSECTION (1)(d)(I) OF THIS SECTION, [...]

5.6.2.3 References Within Nonstatutory Legislative Declarations

In a nonstatutory legislative declaration, to refer to a different provision within the nonstatutory legislative declaration, use the same citation guidelines as in statute. For example, "subsection (1)(g) of this section." In this example, "section" is the section that contains the nonstatutory legislative declaration.

5.6.3 References to Federal Law

Place references to short titles of federal acts in quotation marks and capitalize them wherever the official short title includes capital letters, e.g., section 602 of the federal "Social Security Act" or section 4 of the "Federal Hazardous Substances Act". A federal act usually has the first letter of each word capitalized, and it should be quoted if it is the proper title of the act. Whenever possible, include the citations for the federal act. The popular name table of the U.S. Code Annotated is extremely useful in finding the exact short title of a federal act and can be found online here. The word "Title" as used in a reference to a federal act is also capitalized and its number appears in roman numerals, for example: "Title XIX of the federal "Social Security Act"". Do not capitalize the word "section" when referring to a specific section of a federal act.

References to federal law found in the U.S. Code take the following form: "42 U.S.C. sec. 1315". References to federal public laws can be written either as "Federal Public Law 92-603" or as "federal "Superfund Amendments Reauthorization Act of 1986", Pub.L. 99-499, 100 Stat. 1613 (1986)". If the sponsor's intention is to include future amendments to the federal law in the citation, the phrase "as amended", is preferable to the phrases "and amendments thereto" or "as from time to time amended".

Examples - citing to the U.S. Code:

(1) (a) Upon a determination by the administrator that the person is a party to a contract awarded by the United States secretary of education under 20 U.S.C. sec. 1087f, a person seeking to act within this state as a student loan servicer is exempt from the application procedures described in subsection (2) of this section.

(c) Comply with all relevant requirements of the federal "National Voter Registration Act of 1993", 52 U.S.C. sec. 20501 et seq.; and

(16.5) "Federally accredited laboratory" means a laboratory certified under section 231 of the federal "Help America Vote Act of 2002", 52 U.S.C. sec. 20901 et seq., or any successor section.

Citation to the federal session laws may be necessary if a federal act has not been codified or sections of an act appear in so many scattered sections or titles that useful citation to the U.S. Code is impossible. To cite scattered statutes, include the "Public Law" citation.

Examples - citing to Public Law:

The general assembly finds, determines, and declares its intent to adopt a central filing system for security interests relating to farm products pursuant to section 1324 of the federal "Food Security Act of 1985", Pub.L. 99-198.

(A) Healing practices using food; food extracts; dietary supplements, as defined in the federal "Dietary Supplement Health and Education Act of 1994", Pub.L. 103-417; nutrients; homeopathic remedies and preparations; and the physical forces of heat, cold, water, touch, sound, and light;

5.6.4 References to Committees of Reference

When referring to a committee of reference in a bill or a resolution, the drafter should use the correct name of the committee followed by the phrase "or any successor committee." This is necessary to avoid inaccurate references in the statutes if the General Assembly changes the name of the committee. For example, "The committee shall submit the report to the business affairs and labor committee of the house of representatives and the business, labor and technology committee of the senate, or any successor committees." If the committee of reference is a statutorily created committee like the joint budget committee or legislative audit committee, use the statutorily given name and do not include the successor committee phrase. Drafters should use the committee names canned language in WordPerfect to ensure the bill includes the correct name of the committee.

5.6.5 References to Short Titles

In the C.R.S., when citing a Colorado statute by using its short title, use quotation marks around the short title and include as part of the citation the appropriate part, article, and title of the statute. For example:

... the "Colorado Auto Accident Reparations Act", part 7 of article 4 of title 10.

In a bill summary, cite the name of the short title of the act, within quotation marks; the part, article, or title number are not needed. For example:

> ... the "Colorado Auto Accident Reparations Act" requires ...

5.6.6 References to Other Bills

Sometimes it is necessary to refer in the language of a statute to a bill that has passed during that same session (or any other session). To do that, the drafter needs to state the number of the bill and the phrase, "enacted in _____" and fill in the year. For example:

> ... THE PROJECTS TO BE FUNDED BY THE REVENUES APPROPRIATED FOR THE YEAR BY HOUSE BILL 09-1234, ENACTED IN 2009, CONSIST ONLY OF ...

To distinguish between the regular session and an extraordinary (or "special") session, when referencing an extraordinary session, an additional phrase is needed:

> ... THE PROJECTS TO BE FUNDED BY THE REVENUES APPROPRIATED FOR THE YEAR BY HOUSE BILL 20B-1412, ENACTED IN 2020, FIRST EXTRAORDINARY SESSION, CONSIST ONLY OF ...

5.6.7 References to the Bill Itself

When a bill needs to reference itself, the drafter should refer to "this" House/Senate bill and, because bill numbers are assigned at introduction, leave the bill number blank in the introduced bill. For example, for a bill drafted for the 2024 session:

> "... THIS HOUSE BILL 24-____".

The drafter should draft an amendment for the bill sponsor to include the correct bill number. Because the "this" makes it clear that the reference is to the bill itself, the bill number can be added in the publications process. However, the strong preference is that the bill number is added by amendment. Because this language will be added into the law, the drafter should also strike the word "this" in the amendment.

Example amendment to updated bill number:

> Page 1, line 20, strike "THIS HOUSE BILL 24-____" and substitute "HOUSE BILL 24-1042".

5.6.8 References to the Colorado Constitution

When referring to Colorado's constitution, use "state constitution". However, the drafter may decide to refer to Colorado's constitution using a different term for clarity or consistency. For

example, if the subdivision of law refers to other states' constitutions, the drafter may refer to the "Colorado constitution". Also, historically, references to the state constitution have varied: "State constitution", "Colorado constitution", and "constitution of the state of Colorado" have all been used. So, in certain circumstances, a draft may use one of those terms to maintain consistency within the section, part, article, or title. The constitutional article number should always be represented by Roman numerals.

Examples:

> **1-1-102. Applicability.** (2) For elections that must be coordinated pursuant to section 20 (3)(b) of article X of the state constitution where the enabling legislation does not require ...
>
> **23-18-202. College opportunity fund.** (7) The amount of a stipend received by a state institution of higher education does not constitute a grant from the state of Colorado pursuant to section 20 (2)(d) of article X of the state constitution.

5.7 Grammar, Style, and Use of Plain Language

This manual does not attempt to educate the drafter thoroughly in grammatical construction or punctuation in writing bills. Other resources are available in the Office for any drafter who wishes to become more familiar with practices followed in well-worded and well-constructed legislation. Basically, the fundamental rules of grammatical construction used in composition apply to statutory drafting. In addition, section 2-2-801, C.R.S., requires bills and amendments to be drafted in plain language. To avoid confusion and duplication, the guidelines on the use of plain language and the principles of grammar and style are consolidated in this Chapter.

Section 2-2-801, C.R.S., directs the staff of the Office and others to draft bills and amendments in plain, nontechnical language:

> **2-2-801. Plain language requirement in state laws.** Any person, including members of the general assembly and employees of each house of the general assembly, the office of legislative legal services, the legislative council staff, and the staff of the joint budget committee, shall ensure that, to the extent possible, **all bills and amendments to bills prepared or proposed by such person are written in plain, nontechnical language and in a clear and coherent manner using words with common and everyday meaning which are understandable to the average reader.** Enactment of a bill by the general assembly shall create a presumption that such bill conforms to this section. **(Emphasis added.)**

In addition, section 1-40-105 (1), C.R.S., provides similar requirements for initiatives:

> **1-40-105. Filing procedure - review and comment - amendments - filing with secretary of state.** (1) The original typewritten draft of every initiative petition for a proposed law or amendment to the state constitution to be enacted by the people, before it is signed by any elector, shall be submitted by the proponents of the petition to the directors of the legislative council and the office of legislative legal services for review and comment. **Proponents are encouraged to write such drafts in plain, nontechnical language and in a clear and coherent manner using words with common and everyday meaning which are understandable to the average reader.** Upon request, any agency in the executive department shall assist in reviewing and preparing comments on the petition. No later than two weeks after the date of submission of the original draft, unless it is withdrawn by the proponents, the directors of the legislative council and the office of legislative legal services, or their designees, shall render their comments to the proponents of the petition concerning the format or contents of the petition at a meeting open to the public. **Where appropriate, such comments shall also contain suggested editorial changes to promote compliance with the plain language provisions of this section.** Except with the permission of the proponents, the comments shall not be disclosed to any person other than the proponents prior to the public meeting with the proponents of the petition. **(Emphases added.)**

In drafting bills and amendments, drafters should consider the following guidelines to ensure that the written product is written in plain language and uses proper grammar:

Updating existing law to conform with these guidelines: The office periodically updates the grammar and style guidelines in this section 5.7, and a bill drafter, legislative editor, or revisor should update outdated existing law, if already otherwise included in a bill, to conform with the current practices. Do not update a subdivision of law that is not already in a bill for other substantive reasons, but do update an introductory portion of law that is not otherwise being amended and therefore wouldn't otherwise be referenced in the amending clause.

Particularly, after the 2011 legislative session, the Office revised its drafting guidelines pertaining to active voice, verb tense, and the use of authority verbs (sections 5.7.5 through 5.7.8, below). These guidelines emphasize writing in active voice, writing in present tense, and more consistent use of the authority verbs "shall," "shall not," "must," "may," and "need not." The drafter will find many examples of existing statutes that do not follow these guidelines and that likely should be updated.

When determining whether to update existing statutory language, OLLS staff should consider whether updating the language is likely to create ambiguity or have any substantive effect;

whether updating the existing language clearly would not affect the reasoning or result of case law interpreting the language; whether the existing language relates to a particularly sensitive issue that should not be raised by updating the language; and whether the sponsor of the bill or the committee that will hear the bill is likely to be concerned with each statutory change.

5.7.1 The Meaning of Statutes Should Be Clear and Easily Understood

All of the concepts presented here are directed toward making the statutes clear in meaning and understandable to the public.

5.7.2 Use Proper Grammar and Follow the Drafting Manual Requirements – Use Standard English

Section 2-4-101, C.RS., states:

> Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

Further, the Colorado Supreme Court has held that "[t]he plain language of the statute is the best indication of legislative intent, and clear and unambiguous language eliminates the need to resort to other principles of statutory construction such as legislative history or external circumstances at the time the statute was enacted." *People v. J.J.H.*, 17 P.3d 159, 162 (Colo. 2001).

5.7.3 Be Brief, but Not to the Extent That Clarity Is Lost—Draft Short Sections, Subsections, and Paragraphs, and Use Short and Simple Sentences Wherever Possible

Generally, **the shorter a bill can be drafted, the better;** but the drafter should not become so intent on brevity that the drafter does not adequately treat all necessary requirements. For example, a drafter once wrote that "Absentee voting shall be permitted in the election provided for in this act" but set up no procedure as to how the absentee voting would be handled. The drafter should have outlined a detailed procedure for absentee voting or, better still, referred to and adopted the specific procedure used for absentee voting in an election law already on the statute books that was adaptable to the bill.

5.7.4 Use the Structure of the Statutes to Assist in Clarifying a Sentence

A sentence that is lengthy or difficult to follow may be made clear through the proper use of subdivisions in the statutes. For example, the following provision can be divided so that it is easier to follow:

Avoid:

(15) "Tangible personal property" means corporeal personal property. The term does not include newspapers, as defined in section 24-70-102; preprinted newspaper supplements that become attached to or inserted in and distributed with such newspapers; or direct mail advertising materials that are distributed in Colorado by any person engaged solely and exclusively in the business of providing cooperative direct mail advertising.

Write:

(15) (a) "Tangible personal property" means corporeal personal property.
(b) "Tangible personal property" does not include:
(I) Newspapers, as defined in section 24-70-102;
(II) Preprinted newspaper supplements that become attached to or inserted in and distributed with such newspapers; or
(III) Direct mail advertising materials that are distributed in Colorado by any person engaged solely and exclusively in the business of providing cooperative direct mail advertising.

5.7.5 Use the Active Voice in Sentences

Whenever possible, write sentences that clearly identify the actor of the sentence, and use the active voice to make that actor take the action specified in the sentence. But, the drafter should retain passive voice in a statute if the actor's identity is unknown or there are numerous actors and it would be difficult to determine the proper actor.

Passive voice (actor absent): A notice **shall be mailed** to the parties within fifteen days after issuance of an order.

Active voice (actor present): The commission **shall mail** a notice to the parties within fifteen days after issuance of an order.

Passive voice: A permit **shall be issued** by the state engineer.

Active voice: The state engineer **shall issue** a permit.

Passive voice: Prescribed forms **may be furnished** by the county clerk and recorder.

Active voice: The county clerk and recorder **may furnish** prescribed forms.

5.7.6 Provisions Should Generally Be Stated in the Present Tense. Avoid Use of the Future Tense

Statutes operate in the continuing present; they tell the reader what must, cannot, may, and need not be done at the time the statute is applied. Under Colorado's rules of statutory construction, "words in the present tense include the future tense." (Section 2-4-104, C.R.S.)

Future tense: Beginning January 1, 2025, the penalty for a violation of this section **shall be** one hundred dollars.

Present tense: Beginning January 1, 2025, the penalty for a violation of this section **is** one hundred dollars.

Future tense: After the parties both eliminate one of the three nominees, the remaining doctor **will become** the independent medical examiner.

Present tense: After the parties both eliminate one of the three nominees, the remaining doctor **becomes** the independent medical examiner.

5.7.7 Use the Singular Instead of the Plural Wherever Possible

Section 2-4-102, C.R.S., states:

> **2-4-102. Singular and plural.** The singular includes the plural, and the plural includes the singular.

If the plural must be used in a compound word, the significant word takes the plural:

attorneys-at-law	grants-in-aid	notaries public
attorneys general	guardians ad litem	rights-of-way
deputy sheriffs	judge advocates	trade unions

5.7.8 Use of Authority Verbs to Mandate, Permit, Prohibit, or Impose Conditions

Authority verbs are those verbs that:

- Mandate;

- Prohibit;
- Permit; or
- Impose conditions.

Examples of authority verbs are "shall," "must," "may," and "need."

In legal drafting, words such as "shall," "must," and "may" are, at times, ambiguous because each could have multiple, possibly conflicting meanings. When a word takes on too many meanings, it becomes useless to the drafter. To avoid this result, consistently use these words as indicated in this section and in accordance with section 2-4-401, C.R.S., and the legislative declaration stated in House Bill 13-1029.

The following test will help the drafter determine whether an authority verb is used correctly. If the words in quotes from the right-hand column below convey the intended meaning, then use the word or words from the left-hand column.

shall	=	a person "has a duty to" (but see section 5.7.1.8 (a)(I)(B) below regarding the passive voice)
shall not	=	a person "has no authority to", "has a duty to not", or "is not permitted to"
may	=	a thing or person "is permitted to" or a person "has discretion to" or "has authority to"
must	=	a thing or person "is required to" meet a condition for a consequence to apply. "Must" does not mean that a person has a duty.
need not	=	a condition "is not required to" be met by a thing or person

Also, when applying this test, the drafter needs to remember that the definition of "person" in section 2-4-401 (8), C.R.S., is "any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity". This definition applies by default to every statute, unless the applicable statutes contain a more specific definition of "person".

5.7.8.1 Shall

(I) (A) **Shall.** Use "shall" to impose a duty on a person. "Will", "must", and "should" should not be used as a substitute for "shall". A "thing" cannot have a duty, so use "must" or "must not" to impose a condition on a thing instead of using "shall" (see section 5.7.8.4 of this chapter).

Avoid: The state engineer **will** administer the laws of the state relating to water.

Write: The state engineer **shall** administer the laws of the state relating to water.

Avoid: The board **shall not** include more than one member from a single congressional district.

Write: The governor **shall not** appoint more than one member from a single congressional district to the board.

Avoid: An eligible grantee **shall not** have an income above the federal poverty line.

Write: Only a person whose income **does not** exceed the federal poverty line is eligible as a grantee.

(B) **Using "shall" in the passive voice.** *See* section 5.7.5 of this chapter for the rule concerning use of the active voice. If using the passive voice, because the actors are unknown, unmistakable, or too numerous to list, and the context indicates a legislative intent that a person has a duty, use "shall", not "must.".

For example, "The votes **must** be recorded within twenty-four hours after being cast" implies that a machine automatically records the votes, or at least that no person has a duty to record the votes. "The votes **shall** be recorded within twenty-four hours after being cast". This implies that a person records the votes and has a duty to do so.

Avoid: The fee **must** be paid within twenty days.

Write: The fee **shall** be paid within twenty days.

Avoid: The revenues **must** be allocated to the division.

Write: The revenues **shall** be allocated to the division.

Note: Typically, we would know who the actor is in the above examples (i.e., who pays the fee or who allocates the revenue), but if we don't know the identity of the actor, we write the sentence in passive voice. We use the word "shall" because whoever the actor is, the person has a duty to collect revenues.

(II) Avoid using "shall":

(A) **To state a legal fact or result.** A common problem in legislative drafting is that the word "shall" is often used to indicate a legal result rather than a command. This is known as a "false imperative". An example of this usage of "shall" is the following:

False Imperative: The advisory committee **shall consist** of the director, the administrator, and the executive director.

Alternatives: The advisory committee **consists** of the director, the administrator, and the executive director.

or

The members of the advisory committee are the director, the administrator, and the executive director.

Avoid: As used in this section, "commission" **shall mean** ...

Write: As used in this section "commission" **means** ...

Avoid: This section **shall not apply** to offenses committed ...

Write: This section **does not apply** to offenses committed ...

Avoid: A person **shall be deemed** to be liable if ...

Write: A person **is** liable if ...

(B) **To confer a right.** "Shall" means that a person has a *duty*. Using "shall" to confer a right would imply a **duty** to enjoy the right.

Avoid: The director **shall** receive one thousand dollars per year.

Write: The compensation for the office of director **is** one thousand dollars per year.

NOTE: In this example, the director doesn't have a **duty** to receive one thousand dollars per year, which is why it is better to write that the compensation "is" one thousand dollars per year.

(C) **To indicate a future occurrence.** *See* section 5.7.6 of this chapter for the rule concerning use of the present tense.

(III) When using "shall" to mandate an action in which the outcome is in the discretion of the actor, include alternative actions the actor may take:

Avoid: The commissioner shall **approve** an application within thirty days.

Write: The commissioner shall **approve or deny** an application within thirty days.

5.7.8.2 Shall Not

(I) **Shall not.** Avoid the use of "may not" to prohibit because it could be interpreted to refer to an improbable or unnecessary action rather than a prohibited one. Instead, use "shall not" to prohibit or deny authority or to impose an affirmative duty not to act with regard to a person.

Avoid: The director **may not** consider comments submitted after the deadline.

Write: The director **shall not** consider comments submitted after the deadline.

Avoid: The board **has no authority** to award a grant to an unqualified applicant.

Write: The board **shall not** award a grant to an unqualified applicant.

(II) **No person shall.** Drafters should avoid using the phrase "no person shall" in a sentence written in active voice. For example, "**No person shall** act..." means, literally, "no person **has a duty** to act...". This would allow everyone to do the act specified because "no person" has a duty, implying that the action is discretionary or not prohibited. To prohibit the action, the drafter should write "**A person shall not** act...". Using the test for authority verbs, that means that a person "has a duty to" not act as specified.

Compare the "no person shall" phrase in a sentence written in the passive voice: "No person **shall be** required by the director to...". In this instance, the director does have a duty to not require anyone to act as specified; that person is not, however, the subject of the sentence. As usual, it's preferable to write the sentence in the active voice if possible: "The director shall not require a person to ...".

5.7.8.3 May

May. Use "may" to permit or grant discretion or authority with regard to a thing or person.

Avoid: The certificate **can** include the holder's street address.

Write: The certificate **may** include the holder's street address.

Avoid: A person **has the right to** appeal by filing a written notice with the director.

Write: A person **may** appeal by filing a written notice with the director.

Avoid: The board **has authority** to promulgate rules.

Write: The board **may** promulgate rules.

5.7.8.4 Must and Must Not

Must. Use "must" or "must not" to impose a condition on a thing or person.[2] The drafter should consider whether to explicitly state the consequence of not meeting the condition.

[2] See *Silverview at Overlook, LLC v. Overlook at Mt. Crested Butte LLC*, 97 P.3d 252, 255 (Colo. App. 2004) *cert. denied* (2004) (in construing a statute that states "The declaration must contain:", the court held that use of the word "must" "connotes a requirement that is mandatory and not subject to equivocation.")

Avoid: The notice of appeal **shall** contain the following information:

Write: **To be effective**, the notice of appeal **must** contain the following information:

Avoid: A candidate **shall** reside in the district.

Write: **To be qualified as a candidate**, a person **must** reside in the district.

Avoid: An eligible grantee **shall not** have an income above the federal poverty line.

Write: To be eligible for a grant, a person **must not** have an income above the federal poverty line".

5.7.8.5 Need Not

Need not. Use "need not" to specify that a thing or person is not required to meet a condition.

Avoid: To be valid, a notice **does not need to** be sent by registered mail.

Write: To be valid, a notice **need not** be sent by registered mail.

Avoid: A person **shall not** be a resident to qualify as a candidate.

Write: A person **need not** be a resident to qualify as a candidate.

Avoid: The board **shall not be required to have** a quorum in order to adjourn.

Write: The board **need not have** a quorum in order to adjourn.

5.7.9 Use Base Verbs

Buried verbs (or nominalizations or zombie nouns) are words ending in -tion, -ment, and -ity or verbs that are followed by "of." Use the verb instead of the nominalization.

Nominalization: The commission shall **make a determination** whether the application is approved within fifteen days of filing.

Base verb: Within fifteen days after the applicant files the application, the commission shall **determine** whether the application is approved.

5.7.10 If Possible, Use Finite Verbs Rather than Their Corresponding Participles, Infinitives, Gerunds, or Other Noun or Adjective Forms

Do not say "give consideration to", say "consider". Do not say "is applicable to", say "applies".

A gerund is a verbal noun, or what happens when "-ing" is added to a verb to make the verb a noun. Sometimes a statute could be written more directly by unburying the verb. (To rephrase: To write a statute more directly, unbury the verb.)

Neither of the examples below are wrong. One is just more direct.

Avoid using a gerund: Each insurance company licensed to do business in this state and **engaged in the writing of** medical malpractice insurance shall....

Write: Each insurance company licensed to do business in this state **that writes** medical malpractice insurance shall....

5.7.11 Use Simple Sentences and Use Simple Words

For example, "A violation of this act **is** a misdemeanor" is preferable to "A violation of this act **constitutes** a misdemeanor".

5.7.12 Use Common Words, Avoiding Technical Terms or "Legalese". However, Use Terms of Art If They Are Appropriate

For example:

Avoid: Utilize

Use: Use

Avoid: Promulgate

Use: Adopt

5.7.13 Use the Common Meanings of Words

Strained meanings for words, even if precisely defined in the statutes, may lead to confusion or misinterpretation. For example, don't define "automobile" to mean "a car, motorcycle, train, boat, helicopter, or airplane" because using a word that has a common meaning but redefining it in a way that subverts the common meaning can cause confusion.

5.7.14 Avoid Redundant Phrases

Examples to avoid: "Null and void", "any and all", "full and complete", "authorized and empowered", and "rules and regulations".

- For "null and void" use "void";

- For "any and all" use "all"
- For "full and complete" use one or the other, depending on context
- For "shall be in force and effect" use "take effect";
- For "authorized and empowered" use "may"; and
- For "rules and regulations" use "rules"; except that:
    - When referring to federal agencies, "regulations" is correct; if referring to state and federal agencies, "rules and regulations" is correct
    - When referring to HOAs, drafters may use "rules and regulations".

5.7.15 Use Only Necessary Words

Courts attempt to give meaning to all words in a statute. There shouldn't be any unneeded words. For example, the following is too verbose:

> The chief clerk is hereby authorized and it shall be the chief clerk's duty to sign and approve every order that may be issued by the commission, and the chief clerk shall have every such order published as provided for in this article 4.

A more concise and direct statement follows:

> The chief clerk shall sign every order of the commission and have the order published as required by section #-#-###.

5.7.16 Avoid the Use of Archaic Terms

For example, words like "whomsoever" or "aforementioned". In short, never use a "big" word when a simple word will do.

In current law, if the archaic word can be updated, it should be updated, but be careful that you don't create an ambiguity or change the meaning. If the archaic word is vague, before making a change, ask yourself whether you're sure you know what it refers to.

Do not add archaic or vague words to new law:

- Do not use "hereby"

    Incorrect: The board is hereby created in the department of education.

    Correct: The board is created in the department of education.

- Instead of "heretofore", use "previously", "formerly", or "before"

  Incorrect: All persons licensed heretofore ...

  Correct: All persons licensed before July 1, 2025, ...

- Instead of "aforementioned", use "former", "prior", or "preceding"
- Instead of "above", cite to the provision

  Avoid: "The risks listed above ...."

  Write: "The risks listed in subsection (1) of this section ...."

- Instead of "herein", cite to the provision.

  Avoid: "As used herein, an issue of official concern is limited to ...."

  Write: "As used in this section, an issue of official concern is limited to ...."

- If a member or contact person suggests using "whomsoever", question whether the word is even needed.
  - For example, the "whomsoever" is extraneous in the phrase " ... the legality of the vote is not open to contest by the district, or any person whomsoever, for any reason".
- Do not use "henceforth" to refer to the time after a bill takes effect. Instead, refer to the effective date or the subdivision or subdivision as amended:
  - "On or after the effective date of this article __ [part __, section, etc.]".
  - When existing statutory material is amended, refer to: "On or after the effective date of this article __ [part __, section, etc.], as amended, ..."

5.7.17 Do Not Use or Retain References to Outdated Terms

Be alert for references to outdated terms, such as references to the civil service or the tax commission; refer instead to the state personnel system or the property tax administrator.

Certain writs have been abolished in connection with supreme court review; the preferred language is "subject to appellate review pursuant to state law and the Colorado appellate rules".

Also watch for the allocation of legislative duties to the lieutenant governor, the president of the senate, and the majority leader of the senate, which were changed by constitutional amendment adopted in 1974.

5.7.18 Use of "And" and "Or"

Use the word "**and**" to connect two or more phrases, conditions, events, etc., all of which must occur.

Use the word "**or**" to connect two or more phrases, events, conditions, etc., when only one or more, but not all, need occur.

Never use the phrase "and/or". Instead of using "and/or", use "A or B or both". For example:

> A person who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for up to six months, **or by both** fine and imprisonment.

Use an "and" or an "or" at the end of the second-to-last paragraph in a series of paragraphs under an introductory portion when the paragraphs are not complete sentences. For example:

> (b) In order to receive a tuition waiver, the qualifying student must:
>
> (I) Complete the free application for federal student aid, including, if applicable, acknowledging past or current foster care placement;
>
> (II) Be enrolled in courses leading toward a bachelor's degree, a postgraduate degree, an associate degree, or a certificate of completion at an institution of higher education; and
>
> (III) Remain in satisfactory academic standing in accordance with the academic policies of the institution.

If the second-to-last paragraph has more than one sentence or is a complete sentence that should end with a period, "and" or "or" cannot be used (see section 5.2 of this chapter). In this case, the introductory portion should be amended to specify whether all, one, or some of the paragraphs are required. For example **(emphasis added)**:

> (1) A disclosure of information by a person or entity to a division or agency within the department of public health and environment regarding any information related to an environmental law is voluntary if **all of the following** are true:
>
> (a) The disclosure is made promptly after knowledge of the information disclosed is obtained by the person or entity;
>
> (b) The disclosure arises out of a voluntary self-evaluation;
>
> (c) The person or entity making the disclosure initiates the appropriate effort to achieve compliance, pursues compliance with due diligence, and corrects the noncompliance within two years after the completion of the voluntary

self-evaluation. Where the evidence shows the noncompliance is the failure to obtain a permit, appropriate efforts to correct the noncompliance may be demonstrated by the submittal of a complete permit application within a reasonable time.

(d) The person or entity making the disclosure cooperates with the appropriate division or agency in the department of public health and environment regarding investigation of the issues identified in the disclosure.

Many times in bill drafting, the drafter will need to amend a statute with an existing series to add another item to the series. If the drafter adds a new item to the end of the series and the existing statute already has an "and" or "or", the drafter should strike the existing "and" or "or" from the statute and add it following the second-to-last final paragraph or item in the series in the statute.

However, because the amending process can be rushed and an existing "and" or "or" in the wrong location in the series may get overlooked, the Publications Team has developed a category of revision change to fix this problem through revision. On revision, the Publications Team may move an "and" or "or" in a series to the second-to-last paragraph where it is obvious that the existing "and" or "or" should have been stricken and amended in the process of adding items to the series. However, the Publications Team will not add an "and" or "or" to a statute on revision where one never existed in the statute.

5.7.19 Use of "To" and "Through"

Use the connecting word "to" to include the first and last items and the intervening sections specified in a succession of statutory sections or subdivisions (subsections, paragraphs, etc.,) of a statute. This is pursuant to section 2-4-113, C.R.S., which provides that a reference to several statutory sections in succession includes the intervening sections as well as both sections mentioned.

However, when referencing a succession of numbers, dates, letters, etc., use the connecting word "through" to include the last item mentioned. But, if expressing a range of ages, follow the guidelines indicated in section 5.7.1.30 of this chapter.

- In subsections (1) to (9) of this section;
- From July 1, 2020, through July 30, 2020.

In bill summaries, when referencing sections of the bill, use "through" (and remember that section numbers in bill summaries are in bold).

5.7.20 Use of "That" and "Which"

Use "that" for a restrictive clause and "which" for a nonrestrictive clause.

"**That**" indicates a **restrictive clause** that restricts and defines the word modified and that is necessary to identify the word modified. A restrictive word, clause, or phrase is necessary to the meaning of a sentence and is **not** set off by commas.

> **Example restrictive clause:** The court shall retain the weapon **that** was used in the alleged offense until the conclusion of the trial.

"**Which**" indicates a **nonrestrictive clause** that does not restrict the word modified and that provides additional or descriptive information about the word modified. A nonrestrictive word, clause, or phrase is not essential to the meaning of a sentence and is set off by commas.

> **Example nonrestrictive clause:** The commission shall establish the hearing date, **which** may be changed upon the request of either party.

5.7.21 Be Consistent in the Choice of Words, Both in the Bill and Throughout the Law

Check to see what terms are already used in the statutes, the constitution, or the rules.

If a word or phrase is defined in a definitions section, the drafter should use the word or phrase exactly as defined and only when the meaning given by the definition is intended. If the drafter intends a contrary meaning, the drafter must state the contrary meaning specifically.

In addition to defined terms, drafters should be consistent when using ordinary words. For example, don't use "minor" in one sentence and "child" in another. Using synonyms does not add variety, only confusion.

Drafters should also be consistent when using official titles. For example, don't refer to the "state highway engineer" in one sentence and to the "chief engineer" in another.

Always check the official title of an officer, department, agency, institution, or other entity in the statutes and use the correct title either in full or, after using it once in its complete form, provide for its use in a shorter form by so stating in the bill. The latter may be done by adding a definition to the definitions section for that part or article or, if the term is only used in a single C.R.S. section, by adding a definitions subsection to the section or a clause similar to the following: "The department of natural resources, referred to in this section as the "department", shall...."

5.7.22 Spell Out "House Bill" and "Senate Bill"

In bill summaries and in the Colorado Revised Statutes, spell out "House Bill" and "Senate Bill".

Note: In statute, be sure to include the phrase "enacted in [year]" after the bill number so that the reader knows which year the bill was passed.

Example:

> House Bill 18-1295, enacted in 2018, does not allow an entity to sell drugs.

5.7.23 Do Not Use Provisos

A proviso contains the words "provided that", "provided, however, that", or "provided further, that" before a sentence or clause, usually to state an exception to the preceding sentence or clause. The proviso originally was used in conveying real property and was a reservation on the grant - the sole purpose of the reservation being to defeat the grant upon the happening of a condition subsequent.

In statutory drafting, provisos have most often been used to make exceptions to preceding provisions and are sometimes improperly used to present extraneous ideas not connected with a preceding provision. In legislation, to make a simple exception to a preceding provision, use words such as "but", "except that", "if", or "so long as". If a provision is subject to numerous exceptions or conditions, place those exceptions or conditions in a separate section or subsection for clarity.

> **Avoid:** The sheriff shall approve an application for a concealed weapon **provided that** the applicant has not been convicted of more than five homicides.
>
> **Write:** The sheriff shall approve an application for a concealed weapon **if** the applicant has not been convicted of more than five homicides.

5.7.24 If Possible, Express Provisions Positively Rather Than Negatively

Examples:

> **Negative (avoid):** The commission **may not reject** a renewal application if the application is complete and the applicant has not been convicted of any crime specified in section 18-1.3-401.

Positive (write): The commission **shall approve** a renewal application if the application is complete and the applicant has not been convicted of any crime specified in section 18-1.3-401.

5.7.25 Do Not Repeat the Same Statutory Requirement in Different Places in the Statutes

At times there are attempts to put the same statutory requirement in more than one place in the statutes rather than enacting the provision once and providing cross references when necessary. Multiple expressions of the same statutory requirements may cause confusion if the multiple provisions aren't worded exactly the same. In addition, there is the possibility that future legislation may inadvertently change some but not all of the provisions. For an example, see the general provisions of title 12, including sections 12-20-202 to 12-20-204 and 12-20-401 to 12-20-408.

5.7.26 Expressing Numbers

5.7.26.1 Numbers in Substantive Law

In substantive law, express numbers as words. For example:

A provider shall file a surety bond in the sum of five thousand dollars.

... in an amount equal to five percent of the total amount spent ...

... in letters not less than one-fourth inch high ...

... who is entering first grade and whose parent or legal guardian ...

Do not use the abbreviated or slang references to numbers.

Write: one thousand six hundred pounds

Avoid: sixteen hundred pounds

Important Exception: Use the number "1" in both the Colorado Revised Statutes and bill summaries when referring to classes of felonies, misdemeanors, etc. (e.g., "a class 1 felony")

Decimal points. Spell out numbers that have decimal points. For example, write "one and two-tenths" or "two-tenths of one percent." Do not write "one point two" or "1.2." For percentages with decimals, such as 2.3%, write "two and three-tenths percent." When you have a number that would be difficult to spell out, like 59.46, ask the Publications Team for permission to use digits.

5.7.26.2 Numbers in Appropriations Clauses

In appropriation clauses, express numbers only in digits: "For the 2019-20 state fiscal year, $40,291 is appropriated to the department of public safety...".

5.7.26.3 Numbers in Bill Summaries

In bill summaries, use digits to express numbers, with the following exceptions:

- The number "one" should be spelled out. For example, write "the penalty for violating the prohibition is increased from one to 2 years in prison."
    - You would usually use the percent sign in a bill summary. For example, "zebra mussels were found in 59% of lakes tested." However, "one percent" is the exception to the rule, as both "one" and "percent" are spelled out.
    - When expressing dollar amounts, you can use the digit "1" if expressing "$1 million", "$1.00 surcharge", etc. If using digits to express dollar amounts in the millions or billions, consider whether using "$1 million" or "$1 billion" will be easier to read than "$1,000,000" or "$1,000,000,000".
    - Do not use the cent symbol. Write "2 cents" and "50-cent surcharge".
- Write out ratios
    - **Write:** two-to-one ratio
- Use digits for numbers with decimal points:
    - **Write:** 1.2
- Spell out ordinal numbers
    - **Write:** first grade
- Spell out a number when it begins a sentence; except that you do not need to spell out a number when it is at the beginning of a bullet and comes off of an introductory portion. For example:

    The bill reinstates the following fees:

    - $20 fee to initially register; and
    - $15 fee to renew a registration.

5.7.27 Expressing Dates

- July 1, 2000;
- Beginning July 1, 2000, and ending June 30, 2001; or
- The license must be renewed before July 1 of each year.

5.7.28 Express Time Intervals for Court Filings or Agency Filings in Multiples of Seven Days

To avoid questions when pleadings are due to be filed by a Saturday or Sunday, the Colorado Supreme Court rules require all time intervals be expressed in multiples of seven. In 2012, 2013, and 2014, the General Assembly adopted bills changing time intervals for court filings or agency filings in statute to multiples of seven.

In drafting a bill that establishes a number of days by which something must be filed with a court or with an agency, the drafter should specify the number of days as a multiple of seven. For example:

> If either party in a civil action believes that the judgment of the county court is in error, the party may appeal to the district court by filing notice of appeal in the county court within fourteen days after the date of entry of judgment and by filing within the fourteen days an appeal bond with the clerk of the county court.

5.7.29 Expressing Time

- 12 noon or 12 midnight;
- 9 a.m. or 2 p.m.; except
- 1:00 p.m. - **not** 1 p.m. Only with the figure "1" use a colon and 00.

5.7.30 Expressing Age

Use "years of age", not "years old".

> **Write:** "twenty-one years of age"

The following examples show how to express age ranges for clarity and preciseness in order to include or exclude the intended ages.

To express a lower age limit, but no upper limit:

> **Write:** "A person who is twenty-one years of age or older ..."

To express an upper age limit but no lower age limit, the limit should exclude the age that is over the upper limit. For example:

> **Write:** "A person who is under twenty-five years of age" (people who are twenty-five years of age are not included)
>
> **Don't Write:** "A person who is twenty-four years of age and under" (it is unclear whether people who are twenty-four years of age are included for the entire year they are twenty-four).

To express both a lower and an upper age limit, combine the examples for upper and lower limits:

> **Example:** "A person who is eighteen years of age or older but under twenty-one years of age" (the range includes people who are eighteen but not people who are twenty-one and over).

5.7.31 Verify That a Prepositional Word or Phrase Encompasses All of the Numbers, Dates, or Items Intended to Be Included by Its Use

Verify that the use of "on", "before", or "after" encompasses all of the numbers, dates, or items intended to be included by its use.

For example, "An individual licensed before and after July 1, 2000" does not provide for persons licensed on July 1, 2000. The use of "on" and "after" would have accomplished the inclusion of persons licensed on July 1, 2000. For example: "An individual licensed before, on, and after July 1, 2000". This caution is especially applicable to numerical tables or categories.

When expressing dates as "on or before (month/date/year)" or "on and after (month/date/year)", ensure that the "or" or "and" is used consistently and makes sense in the context of the provision.

- Think of "on or after" as involving discrete acts that an actor will do once or only once in a while, like applying for a license
- Think of "on and after" as a condition that applies all day, every day, like when prohibiting certain conduct - an actor is prohibited from doing it on the first day and every day thereafter.

When drafting a bill where something must happen before or after a specific date, use "before" or "after", not "of" or "from".

> **Avoid:** Within twenty days of receipt …

Write: Within twenty days after receipt …

5.7.32 Don't Use the Terms "Handicap", "Physically Handicapped", "The Handicapped" or Other Similar Words

In 1993, the General Assembly passed SB 93-242 to change the terminology used in the Colorado Revised Statutes for referring to persons with disabilities in order to be consistent with the federal "Americans With Disabilities Act." The drafter should use terms consistent with SB 93-242. In general, rather than saying "the handicapped" or "handicapped persons", the preferred term is "person with a disability" or "persons with disabilities." Rather than saying that a person has a "handicap", state that the person has a "disability." Drafters should use terms consistent with section 2-2-802, C.R.S., and avoid terminology that equates persons with their condition, such as "epileptics", "autistics", or "quadriplegics." Drafters should also avoid disrespectful, insensitive, or outdated terms, such as "mentally retarded;" and instead use terms such as "persons with intellectual disabilities."

5.7.33 Use "People First" Language

In 2010, the General Assembly enacted section 2-2-802, C.R.S., requiring the use of "people first" language in the Colorado Revised Statutes. Examples of people first language include: Persons with disabilities, persons with developmental disabilities, people experiencing homelessness, persons with behavioral or mental health disorders, and persons with autism.

The expectation is that people first language also applies to terms other than "people" or "persons." For example, statutory sections refer to "offenders." Instead of referring to "seriously mentally ill offenders," apply person first drafting principles for this group of people and write "offenders who are seriously mentally ill." Depending on the context, it could also apply to terms like defendant, veteran, petitioner, applicant, or taxpayer.

5.7.34 Do Not Use "Any," "Each," "All," or "Some" If It's Possible to Use "A," "An," or "The" with the Same Result

5.7.35 Avoid Gender-Specific Terms

See section 5.8 of this chapter on gender-neutral language.

5.7.36 Watch for Problems Related to Particular Words That Are Frequently Confused or Misused

See the Glossary of Words and Phrases Frequently Misused for examples and guidance about frequently misused words and phrases.

5.7.37 Be Careful About Problems Caused by the Rule of the Last Antecedent

The rule of the last antecedent is a rule of grammar that bedevils drafters. It presumes that referential and qualifying words and phrases refer only to the last antecedent clause in a series immediately preceding the qualifying words or phrase. Another way to think about it is that, if there's a list, a modifier that follows the list only applies to the last item of the list. In 1981, the General Assembly repudiated this rule by passing section 2-4-214, C.R.S.:

> **2-4-214. Use of relative and qualifying words and phrases.** The general assembly finds and declares that the rule of statutory construction expressed in the Colorado supreme court decision entitled *People v. McPherson*, 200 Colo. 429, 619 P.2d 38 (1980), which holds that "...relative and qualifying words and phrases, where no contrary intention appears, are construed to refer solely to the last antecedent with which they are closely connected..." has not been adopted by the general assembly and does not create any presumption of statutory intent.

But be careful because the Colorado supreme court in *People v. O'Neal*, 228 P.3d 211 (Colo. App. 2009) held that the change in the statute repudiating the rule of the last antecedent was prospective only. So the last antecedent rule does apply to statutes enacted before section 2-4-214, C.R.S., was enacted. In *People v. O'Neal*, the court was interpreting the definition of "firearm" in the Colorado Criminal Code in section 18-1-901 (3)(h), C.R.S., which had been enacted before section 2-4-214, C.R.S. The definition in question read:

> ... "firearm" means any handgun, automatic revolver, pistol, rifle, shotgun, or other instrument or device capable or intended to be capable of discharging bullets, cartridges, or other explosive charges.

Applying the rule of the last antecedent to this statute, the Court held that the qualifying phrase "capable or intended to be capable of discharging bullets, cartridges, or other explosive charges" was only intended to modify the last general item in the series "other instrument or device". It did not modify handgun, automatic revolver, pistol, rifle, or shotgun.

The best advice to avoid this ambiguity is to rewrite the sentence to avoid the problem. Here are some suggestions:

- If the qualifier only applies to one item, change the order of the items in the list.

  In the following provision, if only the eggs need to be green:

  > **Avoid:** "To get dessert, you must eat ham and eggs that are green."
  >
  > **Write:** "To get dessert, you must eat eggs that are green and ham."

  Make it extra clear by breaking it up:

  > "To get dessert, you must eat the following:
  >
  > (1) Eggs that are green; and
  >
  > (2) Ham."

  Also think about qualifiers that are before the list:

  > **Avoid:** "To get dessert, you must eat green eggs and ham."
  >
  > **Write:** "To get dessert, you must eat ham and green eggs."

- If the qualifier applies to each item in the list, use "each of the following" (or a similar phrase to introduce the list).

  In the following provision, if each item needs to be green:

  > **Avoid:** "To get dessert, you must eat ham and eggs that are green."
  >
  > **Write:** "To get dessert, you must eat each of the following that are green: ham and eggs."

  Again, break it up:

  > "To get dessert, you must eat each of the following that are green:
  >
  > (1) Eggs; and
  >
  > (2) Ham."

- Or repeat the qualifier.

  If the second suggestion does not work, the drafter can repeat the qualifier each time:

  > **Avoid:** "To get dessert, you must eat green eggs and ham."
  >
  > **Write:** "To get dessert, you must eat green eggs and green ham."

- Simplify the list.

  Is a list necessary? Take the phrase "sale and transfer". *Black's Law Dictionary*, 7th edition, p. 1503, explains that the word "transfer" "embraces every method - direct and indirect, absolute or conditional, voluntary or involuntary - of disposing or parting with property or an interest in property." In other words, it's every way a person can stop owning something. And a person can stop owning something by selling it:

  > **Avoid:** "You shall not sell or transfer green eggs to a family member."
  >
  > **Write:** "You shall not transfer green eggs to a family member."

- If necessary, repeat the preposition.

  It's best to avoid a qualifier after a list, but this can be nearly impossible sometimes. An example might be a sentence that uses one list to modify another list. If the lists cannot be simplified, one option is to repeat the preposition. This at least points the court in the right direction:

  > **Avoid:** "To get dessert, you must eat eggs and ham of greenness."
  >
  > **Write:** "To get dessert, you must eat eggs of and ham of greenness."

5.8 Gender-Neutral Language

The Executive Committee of the Legislative Council has directed that gender-neutral language be used for all legislative measures. The Committee on Legal Services has formally approved guidelines for the use of gender-neutral language. The guidelines are summarized in this section.

The Committee on Legal Services guidelines provide that "All bills, amendments, resolutions, memorials, and proposals for legislation to be introduced in the General Assembly shall use gender-neutral style, avoiding male or female gender terms except in those instances in which a gender-specific term is applicable only to members of one sex or in instances where an exemption is provided for in guidelines or standards." The guidelines state that the use of or failure to use gender-neutral language does not prevent a legislator from offering a measure or an amendment. If the drafter has a question about specific language or about the application of the guidelines, the drafter should discuss the matter with the member sponsoring the measure or amendment.

5.8.1 General Considerations and Cautions

When changing language to make it gender-neutral, the drafter should never sacrifice clarity or intent. The drafter should make every effort to follow accepted principles of grammar, punctuation, and usage and any applicable rules of statutory construction.

The drafter may exercise considerable discretion in selecting alternatives for gender-specific language. However, if the drafter adds a new provision to existing law, the drafter should check the portions not being amended to assure that the gender-neutral language is consistent or compatible with those unamended portions. For example, if an article contains a general definitions section defining the term "policeman" and the drafter adds a new section to the article that uses the gender-neutral alternative of "police officer", an ambiguity could result.

5.8.2 Avoid the Use of Gender-specific Nouns

The drafter should avoid using nouns that are gender-specific and instead use substitutes that are generally accepted by recognized authorities on correct English usage.

The following is a list of gender-specific nouns and possible substitutes:

brother, sister	sibling
businessman	business person, executive, member of the community, business manager
chairman	chair
crewman	crew member
daughter, son	child, children
draftsman	drafter
enlisted man	enlisted personnel, enlisted member, enlistee
father, mother	parent, parents
female	person, individual
fireman	firefighter
foreman	supervisor, foreperson
grandfather, grandmother	grandparent, grandparents
husband and wife	married couple, spouses

journeyman	journeyworker (only for plumbers; continue to use journeyman for electricians, linemen, and wiremen)
mailman	mail carrier
male	person, individual
man	person, human, human being, individual
man hours	person hours, hours worked, worker hours
manmade	artificial, of human origin, synthetic, manufactured
manpower	personnel, workforce, worker, human resources
midshipman	cadet
ombudsman	Ombudsperson or ombuds (see https://federalombuds.ed.gov/s/faq)
per man	per person, per individual
policeman	police officer
seaman	sailor, crew member
serviceman	service member
six-man commission	six-member commission
trained manpower	trained workforce, staff, personnel
widow, widower	surviving spouse
wife, husband	spouse
workmen	workers, employees

5.8.3 Avoid the Use of Gender-specific Pronouns

The most difficult aspect of drafting measures in gender-neutral language is avoiding gender-specific pronouns. This manual suggests several alternatives, and some work better than others in given circumstances. The drafter should evaluate each alternative, keeping in mind that the goal in drafting any measure is to assure clarity and avoid ambiguity. In general order of preferred use, the alternatives are:

1. Repeat the subject of the sentence or the antecedent (the noun, etc., that the pronoun refers to). In some instances, repeat the possessive noun.

Examples:

A person shall receive an exemption if ~~he~~ THE PERSON submits an application.

If the director finds cause, ~~he~~ THE DIRECTOR may dismiss the claim.

The director or ~~his or her~~ THE DIRECTOR'S designee shall submit the report.

2. Substitute a noun for the pronoun.

Examples:

If ~~he~~ THE INDIVIDUAL submits an application, the board shall consider it.

Each person listed is eligible. ~~He~~ A LISTED PERSON is also entitled to all ancillary benefits.

3. Omit the pronoun or the phrase that would include the pronoun if the pronoun or phrase is not essential.

Examples:

The director holds ~~his~~ office until a successor is appointed.

Each employee retains the status held ~~by him~~ on the date of ~~his~~ THE EMPLOYEE'S resignation.

4. Use an article such as "a", "an", "the", or "that" instead of the pronoun.

Examples:

The person shall submit ~~his~~ AN application.

An applicant shall include with ~~his~~ THE application a copy of ~~his~~ THE APPLICANT'S permit.

5. Restructure or rewrite the sentence to avoid the need for a pronoun.

Examples:

~~If~~ An applicant WHO has been licensed in another state ~~he~~ shall submit a verified application.

~~If the commissioner finds~~ UPON FINDING that the sampling frequency can be safely reduced, ~~he~~ THE COMMISSIONER may order it reduced as specified in subsection (2) of this section.

> A person who imports or ~~has in his possession~~ POSSESSES dangerous drugs commits a class 1 felony.

5.8.4 Do Not Change Gender-specific Language That Applies to Only One Sex

Words that denote or connote gender distinctions may be used in a statute that specifically applies to only one sex. The drafter should be careful to not change gender-specific language in an existing statute when that statute specifically applies to only one sex.

Example:

> **10-16-104. Mandatory coverage provisions - definitions - rules.** (10) **Prostate cancer screening.** (a) All individual and all group sickness and accident insurance policies, ... shall provide coverage for annual screening for the early detection of **prostate cancer in men** over fifty years of age and in **men** over forty years of age who are in high-risk categories, ...

Another example not contained in the guidelines that also illustrates this principle is contained in section 25.5-3-106, C.R.S., concerning prohibition on the use of public funds for abortions.

> **25.5-3-106. No public funds for abortion - exception - definition - repeal.** (2) If every reasonable effort has been made to preserve the lives of a pregnant woman and her unborn child, then public funds may be used pursuant to this section to pay or reimburse for necessary medical services ....

5.9 Punctuation

Follow the accepted rules of punctuation in drafting bills. Although some courts have held that punctuation is not a part of a statute, punctuation is, of course, necessary, and the Colorado Supreme Court has, at least on one occasion, interpreted a proposed constitutional amendment on the basis of punctuation.[3]

5.9.1 Commas

1. Always use a comma in a series before a conjunction or a semicolon if clauses of a series have punctuation within them.

The following example includes a series separated by commas, with a commas before the "or":

[3] *In re Senate Concurrent Resolution No. 10*, 137 Colo. 491, 328 P.2d 103 (1958).

> "Mental health professional" does not include an unlicensed psychotherapist, an advanced practice registered nurse, or a physician assistant.

In this example, the three items in the series are separated by semicolons because the middle item includes a series includes commas, and a semicolon precedes the "or" before the last item in the series:

> A firearms safety course must be taught by a verified instructor and offered by a law enforcement agency; a public or private institution, organization, or firearms training school that is open to the general public; or an institution of higher education.

2. Use a comma + a conjunction (and, but, for, nor, yet, or, or so) to connect two independent clauses. For example:

> City employees recently received salary increases, and their pension plan was improved.

3. A comma is not normally used to separate compound verbs (or multiword verbs) connected by a conjunction when the subject is not repeated, unless misreading is likely. For example:

> The hearing on any petition is final and is not subject to delay.

4. Place periods and commas inside quotes unless the punctuation is not a part of the matter being quoted. In that case, the punctuation is placed outside the quotes. This is particularly true in amendments to bills. For example, do not place a period inside the quotation marks when stating a short title to a bill:

> The short title of this part 7 is the "Colorado Disaster Emergency Act". (The period is not a part of the short title.)

5. Punctuation in bills based on a uniform act. See section 12.3.2 of this manual.

5.9.2 Colons

Colons can be used to direct attention to a list, a noun, a quotation, or an example or explanation. According to the OLLS style guide, the first word after a colon is initial-capitalized.

Example:

> The following documents are required: A valid driver's license and a certified copy of the applicant's birth certificate.

5.9.3 Hyphens

The following rules generally apply to the Colorado Revised Statutes:

- Do not hyphenate prefixes such as "non," "pre," or "co"
    - Write nondiscriminatory instead of non-discriminatory
    - Write recount instead of re-count
    - Write reemploy instead of re-employ
    - Write coparenting instead of co-parenting
- Do not hyphenate an adverb (that ends in -ly) and adjective pairing that describes a noun.
    - As provided by nationally recognized insurance statutory accounting principles, ...
- Hyphenate "rule-making" and "decision-making"
- Hyphenate cease and desist when the words modify an order
    - Cease-and-desist order
- Use e-mail, not email
- When a prefix modifies more than one word or the word it modifies is capitalized, it should be hyphenated
    - Instead of nonEnglish speaking citizens, use non-English-speaking citizens
- Hyphenate the word "co-owner"
- Hyphenate the term "health-care" when it's used as a modifier
    - Health-care provider

If it is unclear whether or not to hyphenate a word or phrase, first check the free Merriam-Webster online dictionary; it is the official dictionary of the OLLS. Also check the very helpful Preferred Words Table on the bill drafting page of OLLSnet.

5.10 Capitalization

The Office follows capitalization policies for the Colorado Revised Statutes that are different from those found in many English manuals of style. In bills, capital letters are used sparingly. In the age

of typeset printing, capital letters cost more to print, so the General Assembly avoided capitalizing many types of words commonly used in the statutes. This practice continues.

Capital letters should **not** be used for the following:

- The titles of public officers or substitutes for such titles;

  Examples: "lieutenant governor", "the commissioner", or "the director".

- The titles of governmental departments, agencies, institutions, boards, or funds, or substitutes for such titles;

  Examples: "the department", "the university", "the United States supreme court", or "department of health care policy and financing".

- Laws on a particular subject;

  Example: "insurance statutes".

- The words "federal" and "state"; or

- The words "article", "act", "chapter", "section", and "subsection".

Capital letters **should be used** for the following:

- The first word of a sentence and the first word following a colon;

- The first word of each paragraph after a colon, even though the paragraph is a continuation of the sentence;

- The short title of an act;

  Example: "Workers' Compensation Act of Colorado".

- The proper name of a place or jurisdiction, so the name of a county, river, or street, is generally capitalized, but in keeping with the historical practice, the word "county", "river", or "street" is itself not capitalized;

  Examples: "Costilla county", "Colorado river", "Lincoln street", "university of Colorado", and "Lookout Mountain school for boys".

- The word "God";

- When used in a racial, ethnic, or cultural sense, the words Black, Pacific Islander, and Indigenous, because racial and ethnic groups are designated by proper nouns and are capitalized. Similarly:

    - Capitalize Native American

    - When referring to the Ute Mountain Ute Tribe and the Southern Ute Tribe, always capitalize the "T" in Tribe
    - Capitalize, but do not hyphenate (even when used as an adjective), the words African American and Asian American

- The proper name of a private entity or publication; and

  Examples: "Colorado Bar Association," "The National Fire Code," or the "National Fire Protection Association".

- Although they are governmental institutions, the names of military branches.

  Examples: "Marine Corps," "Army," "Navy," "National Guard," or "Air Force."

Before 2015, the Office did not capitalize the names of private entities. So when looking at the Colorado Revised Statutes, the drafter may see the names of entities that have not been capitalized. But now the Office capitalizes these names. If the drafter is already amending the statute, the drafter may capitalize these existing names.

5.10.1 Exceptions

There are a couple of exceptions to the capitalization practices described in this section. Drafters cannot change capitalization in a compact without permission from the compact authorities. Also, in memorials and resolutions, which are frequently sent to Congress or government officials, the Office uses standard rules of capitalization.

5.11 Things Not to Place in the Statutes

5.11.1 Avoid References to Code of Colorado Regulations or the Code of Federal Regulations

Do not refer to a particular citation in the Code of Colorado Regulations (the "CCR"). The rules promulgated by the state agencies should conform to statutes, not vice versa. When the statutes cite to a state rule, this creates a loophole because the state agency can change the rule citation and the statute no longer applies. This also creates an obsolete reference.

It is permissible, however, to refer to the Code of Federal Regulations (the "CFR"). This may still result in an obsolete reference, but the value of referring to federal regulations may outweigh this risk. The drafter should discuss this risk with the member and proponents.

When referring to the CFR, the drafter should also be aware of the risk of creating an improper delegation of legislative authority. Section 1 of article V of the Colorado Constitution vests the legislative power in the General Assembly and the people, respectively. And article III forbids the other branches from exercising each branch's authority.

Caselaw[4] suggests the following principles govern the delegation of legislative authority:

1. The delegation is more likely to be upheld when it is made to a state official.
2. The delegation must provide sufficient standards to guide the power's use: "The legislature does not abdicate its function when it describes what job must be done, who must do it, and the scope of the authority."
3. The delegation cannot authorize another body the ability to repeal or amend state statutes

The first and third principles make a delegation to a federal agency more likely to be held unconstitutional. Therefore, it is a best practice to not cite to a federal regulation in such a way as to allow the federal agency to change state statute. If the drafter must refer to the CFR, the following are best practices when doing so:

- Avoid using the phrase "as amended" to eliminate the ability of the agency to change state statute; and
- Add the phrase "as [the regulation] existed on [date certain]."

  Avoid: 28 CFR 36, as amended.

  Write: 49 CFR 386, subpart G, as the subpart existed on January 1, 2017.

Notwithstanding this best practice, a member or contact person may want to use the phrase "as amended." If so, the drafter should have a conversation with any contact person or the member to explain the risk of the provision being held unconstitutional.

5.11.2 Avoid References to Trade Names or Brand Names

Drafters should avoid referring to trade names or brand names in statutes. Legislators raised concerns about the use of references or terms of a more proprietary nature. One example was the use of the term "toughman" to refer to a type of fighting. The bill sponsor ultimately amended the bill to refer to "toughperson" fighting. Another example was when a bill referred to a type of motorized equipment as a "goped," and concerns were raised that it was a trade name. Upon conducting trademark searches through the U.S. Patent and Trademark Office, the drafter

[4] See *Board of County Commissioners v. Industrial Commission*, 650 P.2d 1297, (Colo. App. 1982); *Olin Mathieson Chemical Corp. v. Francis*, 301 P.2d 139 (Colo. 1956). For more information on these cases and their connection to this issue, see this summary.

discovered that "goped," as used in the title of the bill and in the bill, was not a trade name, but that the hyphenated spelling "go-ped" was a trademark. The drafter prepared an amendment to substitute "motorized scooter" for the term "goped" in the bill. However, since the Office avoids amending bill titles, the term "goped" was not amended in the title.

Another concern is that using a trade name or brand name might constitute "special legislation" in violation of article V, section 25 of the Colorado Constitution (see section5.11.3 of this chapter). The Office is not aware of any legal impediment to using these terms in bills and in statutes, but legislators have expressed concerns about using trade names because that practice could be viewed as an inappropriate endorsement of a particular product. As a result of these concerns, drafters should make the sponsor aware that this has been a drafting issue in the past and should use other descriptive language to substitute in the place of the trade name or brand name.

5.11.3 Avoid Special Legislation

Drafters should be aware of bill requests that may be considered special legislation once drafted. Article V, section 25 of the Colorado Constitution (article V, section 25) prohibits the General Assembly from passing special laws under enumerated circumstances and in all other cases where a general law, rather than a special law, could apply. Generally, the purpose of a constitutional prohibition against special legislation "is to confine the power of the legislature to the enactment of general statutes conducive to the welfare of the state as a whole, to prevent diversity of laws on the same subject, to secure uniformity of law throughout the state as far as possible, and to prevent the granting of special privileges."[5] The purpose of these provisions "is not to limit legislation, but merely to prohibit the doing, by local or special laws, of that which can be accomplished by general laws ...."[6]

Colorado courts have determined that article V, section 25 was enacted to serve several specific purposes. These purposes include preventing class legislation (legislation that applies to some classes but not to others without a reasonable basis for distinguishing between them), curbing favoritism by the General Assembly, preventing the General Assembly from interfering with local affairs, preventing the General Assembly from passing unnecessary laws to fit limited circumstances, and acting as a limitation on the power of the legislature.[7]

As previously mentioned, the constitutional ban on special legislation comprises two parts. The first part sets forth the enumerated prohibitions regarding special legislation, and the second part is a statement of the preference for the enactment of general legislation. If a party

[5] 82 C.J.S. *Statutes* § 151 (1999).

[6] *Id.*

[7] *People v. Canister*, 110 P.3d 380, 382-383 (Colo. 2005).

challenges a statute on the basis of violating the constitutional prohibition against special legislation, a court must first determine whether the statute addresses one of the enumerated prohibitions in article V, section 25.

If the statute implicates an enumerated prohibition, the court will next consider "whether the classification adopted by the legislature is a real or potential class, or whether it is logically and factually limited to a class of one and thus illusory."[8] The primary consideration in determining whether a class is a genuine class and therefore constitutional is whether the statute is "'generic in its application' and 'applicable to other foreseeable situations.'"[9] Colorado courts have demonstrated that, "even when the legislature had a specific entity in mind when drafting the legislation, the class created by the legislation is not illusory if it could include other members in the future."[10] However, the class is illusory if the legislation defines the class in such a way that it could never include "members other than those targeted by the legislation . . . ."[11] If the court determines that the class is a genuine class, the court will then determine whether the class is reasonable.[12] If there is a rational basis for distinguishing the class involved and treating the members of the class similarly, the court will not find that the legislation is special.[13]

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[8] *Id.* at 383, quoting *In re Interrogatory Propounded by Gov.*, 814 P.2d 875, 886 (Colo. 1991).

[9] *People v. Canister*, 110 P.3d at 384, quoting *Greenwood Village v. Petitioners*, 3 P.3d 427, 442 (Colo. 2000).

[10] *Id.* In *In re Interrogatory*, the governor asked the Supreme Court to determine whether a bill that provided certain business incentives with the intent of causing United Airlines to locate a maintenance facility in Colorado violated the provisions of article V, section 25. The Court determined that, while the legislation in question specified certain requirements regarding the length of time of the business incentive agreements and a maximum total monetary outlay of the incentives, there was nothing in the legislation that would prevent another company, in addition to United Airlines, from meeting the statutory criteria contained in the bill. Therefore, the Court concluded that the bill was not, on its face, per se special legislation.

[11] *Id.* In *Canister*, the defendant, Randy Canister, was charged with several counts, including three for first degree murder. After the prosecution announced it would seek the death penalty against Canister, the U.S. Supreme Court held the death penalty sentencing process in Arizona unconstitutional because it denied defendants the right to a jury trial. The process in place in Colorado was basically the same as that in Arizona, so the Governor called the Colorado General Assembly to meet in special session. While the general assembly was meeting, the jury found Canister guilty of all charges. The general assembly enacted a statute during the special session allowing a trial judge, rather than a jury, to determine the death penalty of a person convicted of a capital crime, but only in cases in which the prosecution had announced, as of the effective date of the bill, that it would seek the death penalty. Canister was awaiting sentencing when the new law became effective. At the time the Colorado legislation was passed, Canister and one other criminal defendant were the only two people in the state who were on trial for a capital offense and, due to the timing restrictions in the legislation, were the only two people to whom the statute would ever apply. Therefore, the Colorado Supreme Court determined that the legislation violated the constitutional prohibition of special legislation.

[12] *Id.* at 383.

[13] *In re Interrogatory*, 814 P.2d at 885.

If a statute is challenged on the basis of violating the constitutional prohibition against special legislation, and an enumerated provision of article V, section 25 is not implicated, the question of whether a general law could apply to the situation instead of the specialized law is within the discretion of the General Assembly. The current standard that the courts apply requires only that the classification the General Assembly creates be "reasonable." A court will only consider "whether the General Assembly has acted arbitrarily or capriciously in its decision" to enact a specialized law and will not interfere in the actions of the General Assembly "absent an abuse of that discretion."[14]

If a drafter is concerned that a bill may be special legislation, the drafter should notify the drafter's team leader and should also explain the constitutional prohibition against special legislation to the bill sponsor.

[14] *Id.* at 885-886.

Chapter 6: Additional Substantive Considerations When Drafting

6.1 The Administrative Organization Act of 1968

The general assembly enacted article 1 of title 24, C.R.S., in 1968 to implement the constitutional amendment approved in 1966 calling for the reorganization of the state government's executive branch into not more than 20 principal departments. The article includes a list of the, as of 2024, 20 principal departments and sets forth the statutorily created divisions, sections, boards, commissions, etc., placed within a department. To keep article 1 current and to define clearly the status of newly created agencies within the context of executive reorganization, the drafter must include an appropriate amendment to article 1 of title 24, C.R.S., for any bill:

- Creating a new executive agency with substantive powers (i.e., an agency other than a board or committee that is strictly advisory);
- Transferring an agency from one department to another; or
- Abolishing an agency.

Section 24-1-105, C.R.S., defines two types of entities that determine the relationship between an agency and the principal department. The designation of an agency as a **type 1** or **type 2** entity affects the powers that the agency has based on the definitions set forth in section 24-1-105, C.R.S. All drafters should be thoroughly familiar with these types of entities, since each agency created must be designated as functioning as a **type 1** or **type 2** entity.[1]

A **type 1** entity denotes a relationship in which the subordinate division, board, or other agency exercises its powers and performs its duties and functions independently of the executive director of the department within which the agency is placed. The most important powers retained by a **type 1** entity - powers that may be exercised and performed in whatever way the agency determines, even without the approval of the executive director - are the adoption of rules and the rendering of administrative findings, orders, and adjudications.

[1] In 2022, the General Assembly passed Senate Bill 22-162, which modernized the language used in the Administrative Organization Act and elsewhere in the Colorado Revised Statutes to specify the relationship between an agency and the principal department in which the agency is created. Prior to the passage of Senate Bill 22-162, the statutes referred to **type 1**, **type 2**, and **type 3** transfers to determine the relationship between an agency and a department. Senate Bill 22-162 eliminated the previously used transfer language and instead identified different types of entities to specify this relationship.

With a **type 2** entity, all powers, duties, and functions of the division, board, or other agency belong to the executive director of the department. With both a **type 1** and a **type 2** entity, the executive director of the department is vested with "budgeting, purchasing, and related management functions."

Type 1 and **type 2** entities are only used to describe executive branch agencies and are not used with judicial or legislative branch agencies.

6.1.1 Create a New Entity

When drafting a bill involving the creation of a new agency, the drafter must:

- Add a new subsection, paragraph, or subparagraph to the section in article 1 of title 24, C.R.S., concerning the department in which the agency is being added;
- Specify that the entity exercises its powers and performs its duties and functions under the department in which the agency is created; and
- Specify whether the agency is a **type 1** or **type 2** entity. A reference to **type 1** or **type 2** is in **bold** font.

Create New Entity - Example

This example of how to create a new entity is from the creation of the clean fleet enterprise in the department of public health and environment. The bill that created the clean fleet enterprise added a new subsection (13) to section 24-1-119, C.R.S. Please note that the language in the examples may not exactly reflect what is in statute at the time of this writing.

> **24-1-119. Department of public health and environment - creation.** (13) THE CLEAN FLEET ENTERPRISE, CREATED IN SECTION 25-7.5-103, IS A **TYPE 1** ENTITY, AS DEFINED IN SECTION 24-1-105, AND EXERCISES ITS POWERS AND PERFORMS ITS DUTIES AND FUNCTIONS UNDER THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

The bill also created the clean fleet enterprise in the title governing the department, title 25 - sometimes referred to as the "organic statute," in section 25-7.5-103.

> **25-7.5-103. Clean fleet enterprise - creation - board - powers and duties - fees - fund.** (1) (b) THE ENTERPRISE IS A **TYPE 1** ENTITY, AS DEFINED IN SECTION 24-1-105, AND EXERCISES ITS POWERS AND PERFORMS ITS DUTIES AND FUNCTIONS UNDER THE DEPARTMENT.

If the new agency is a department, the drafter needs to add an entirely new section to article 1 of title 24, C.R.S., and amend section 24-1-110, C.R.S., to add the new department to the list of

principal departments. Note that article IV, section 22 of the state constitution limits the number of principal departments to 20 departments. Colorado currently has 20 principal departments, therefore, the creation of a new department would require an existing one to be abolished.

6.1.2 Transfer Portions of Department to Another Department

If a bill involves the transfer of an existing agency from one department to another department, the drafter must amend the appropriate section in article 1 of title 24, C.R.S., that creates the department to which the agency is being transferred to add the agency and specify whether the agency is a **type 1** or **type 2** entity. The drafter should also specify that the agency exercises its powers and performs its duties and functions under the department to which the agency is transferred. In addition, the drafter must repeal the relevant subsection, paragraph, or subparagraph regarding the agency that is being transferred from the section in article 1 of title 24, C.R.S., concerning the original department.

Finally, in addition to amending the appropriate section in article 1 of title 24, C.R.S., the drafter must also specify that the transfer occurred and include similar language specifying an entity's type in the substantive law governing the agency that was transferred (the organic statute). There may be more than one place in the organic statute governing the agency that the drafter needs to amend and keep current.

Transfer Agency - Example

The following example of the appropriate language to transfer an agency from one department to another is based on the transfer of the Colorado child abuse prevention board to the department of human services from the department of public health and environment:

First, add the agency to the new department's statute:

> **24-1-120. Department of human services - creation.** (10) THE COLORADO CHILD ABUSE PREVENTION BOARD, CREATED IN SECTION 19-3.5-103, IS A **TYPE 2** ENTITY, AS DEFINED IN SECTION 24-1-105, AND EXERCISES ITS POWERS AND PERFORMS ITS DUTIES AND FUNCTIONS UNDER THE DEPARTMENT OF HUMAN SERVICES.

Second, make the following corresponding amendment to the organic statute:

> **19-3.5-103. Colorado child abuse prevention board - creation - members - terms - vacancies.** (1) THE COLORADO CHILD ABUSE PREVENTION BOARD IS TRANSFERRED TO THE DEPARTMENT OF HUMAN SERVICES FROM THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT. THE BOARD IS A **TYPE 2** ENTITY, AS DEFINED IN SECTION 24-1-105, AND EXERCISES ITS POWERS AND PERFORMS ITS DUTIES AND FUNCTIONS UNDER THE DEPARTMENT OF HUMAN

SERVICES. INDIVIDUALS APPOINTED TO THE BOARD CONTINUE SERVING UNTIL COMPLETION OF THEIR TERMS AND MAY BE REAPPOINTED AS PROVIDED IN THIS SECTION.

Finally, repeal any reference to the transferred agency in the department from which the agency is being transferred.

24-1-119. Department of public health and environment - creation. (5) The department of public health and environment consists of the following divisions and boards:

(c) ~~The Colorado child abuse prevention board created in section 19-3.5-103. The board is a **type 2** entity, as defined in section 24-1-105.~~

6.1.3 Transfer & Abolish Department

Prior to Senate Bill 22-162, an agency was abolished through a **type 3** transfer; however, Senate Bill 22-162 eliminated **type 3** transfers. To transfer the powers, duties, and functions of an agency from one department to another and then abolish the original agency, the drafter should amend the appropriate section of article 1 of title 24, C.R.S., to specify that the powers, duties, and functions of the agency to be abolished are included in the powers, duties, and functions of the department to which the agency is being transferred. Then the drafter should state that the agency is abolished. In addition, the drafter will need to repeal the substantive section of statute that created the agency and the portion of article 1 of title 24, C.R.S., in which the agency was originally created.

Transfer & Abolish - Example

In this example, the state department of highways was abolished and a new department of transportation was created.

SECTION #. In Colorado Revised Statutes, **repeal** 24-1-128.6 as follows:

24-1-128.6. State department of highways - creation. ~~(1) There is created the state department of highways, the head of which is the executive director, which office is created. The governor shall appoint the executive director, with the consent of the senate, and the executive director serves at the pleasure of the governor.~~

~~(2) The state department of highways board, created in section 43-1-127, is a **type 1** entity, as defined in section 24-1-105, and exercises its powers and performs its duties and functions under the department.~~

SECTION #. In Colorado Revised Statutes, 24-1-128.7, **add** (4) as follows:

> **24-1-128.7. Department of transportation - creation.** (4) THE POWERS, DUTIES, AND FUNCTIONS OF THE DEPARTMENT OF TRANSPORTATION INCLUDE THE POWERS, DUTIES, AND FUNCTIONS OF THE STATE DEPARTMENT OF HIGHWAYS, CREATED IN SECTION 24-1-126, PRIOR TO ITS REPEAL IN 1991, AND THE STATE DEPARTMENT OF HIGHWAYS IS ABOLISHED.

6.1.4 Transfer Functions

Sometimes certain functions of one agency are transferred to another agency without the agency itself being transferred or abolished. In this case, the drafter should amend article 1 of title 24, C.R.S., to specify that the powers, duties, and functions that are being transferred are included in the powers, duties, and functions of the agency or department to which they are being transferred.

Transfer Functions - Example

Senate Bill 16-093 transferred oversight of independent living services from the department of human services to the department of labor and employment. Note that section 8-85-109, as shown below, was updated in 2022 to reflect current drafting conventions.

> **8-85-109. Transfer of functions- transition plan - report.** (1) On and after July 1, 2016, the powers, duties, and functions of the department of labor and employment include the powers, duties, and functions regarding independent living services that were formerly vested in the department of human services prior to that date.

6.1.5 Transfer Employees, Contracts, Appropriations, and Continuity of Rules

The drafter should consult with the sponsor and the affected agencies about whether the transfer of duties, functions, or agencies involves the transfer of employees, property, contracts, or appropriations or the continuity of administrative rules. The drafter should be alert to any potential problems and should include standard provisions in any transfer bill to transfer the officers and employees of a division or a department, along with their pension rights, to another department and to transfer the property of a division or department to another department, if appropriate. Such provisions belong in the substantive law affecting the agency transferred - not in article 1 of title 24, C.R.S. See section 24-37-105, C.R.S., for an example of the standard language.

For examples of how to preserve existing rules or orders of an agency or department being transferred to another department, see the examples of saving clauses and grandfather clauses in section 2.6 of this manual.

When transferring agencies or functions, the drafter should make all conforming amendments in the bill. If the drafter does not have time to do so or if there are many conforming amendments and the drafter knows a number of other bills that same session will also need to have language updated, the drafter should consult the Revisor of Statutes about other options, such as adding a unique revision change category[2] in the Gray Book or even including the changes in the Revisor's Bill or a Statutory Revision Committee bill.

6.1.5.1 Basic Transfer of Functions

In 2024, House Bill 24-1360 transferred the Colorado disability funding committee from the department of personnel to the Colorado disability opportunity office, which was created in the bill, in the department of labor and employment. The language transferring the committee in the bill included, in part, the following:

> **8-88-202. [Formerly 24-30-2203] Colorado disability funding committee.** (1) (a) ON AND AFTER JULY 1, 2024, THE RIGHTS, POWERS, DUTIES, AND FUNCTIONS REGARDING the Colorado disability funding committee ~~is hereby created within~~ VESTED IN the department of personnel PRIOR TO SAID DATE ARE TRANSFERRED FROM THE DEPARTMENT OF PERSONNEL TO THE COLORADO DISABILITY OPPORTUNITY OFFICE WITHIN THE DEPARTMENT OF LABOR AND EMPLOYMENT.
>
> (b) (I) ON AND AFTER JULY 1, 2024, UNLESS OTHERWISE SPECIFIED, WHENEVER ANY PROVISION OF LAW REFERS TO THE DEPARTMENT OF PERSONNEL IN CONNECTION WITH THE DUTIES AND FUNCTIONS TRANSFERRED TO THE CDOO, SUCH LAW MUST BE CONSTRUED AS REFERRING TO THE CDOO.
>
> (II) AS OF JULY 1, 2024, ALL RULES AND ORDERS OF THE DEPARTMENT OF PERSONNEL ADOPTED IN CONNECTION WITH THE POWERS, DUTIES, AND FUNCTIONS TRANSFERRED TO THE CDOO CONTINUE TO BE EFFECTIVE UNTIL REVISED, AMENDED, REPEALED, OR NULLIFIED PURSUANT TO LAW.
>
> (III) AS OF JULY 1, 2024, WHENEVER THE DEPARTMENT OF PERSONNEL IS REFERRED TO OR DESIGNATED BY ANY CONTRACT OR OTHER DOCUMENT IN CONNECTION WITH THE DUTIES AND FUNCTIONS TRANSFERRED TO THE CDOO, SUCH REFERENCE OR DESIGNATION IS DEEMED TO APPLY TO THE CDOO. ALL CONTRACTS ENTERED INTO BY THE DEPARTMENT OF PERSONNEL PRIOR TO JULY 1, 2024, IN

[2] In 2019, the General Assembly recodified title 12, C.R.S. Because the bill required so many conforming amendments, the Revisor of Statutes created a "category m" revision change. During the spring publications season, whenever Legislative Editors found references to sections in title 12 that needed to be updated, they were able to update them without needing a bill. For the Revisor's authority to make revision changes, see section 2-3-703, C.R.S.

> CONNECTION WITH THE DUTIES AND FUNCTIONS ARE HEREBY VALIDATED, WITH THE CDOO SUCCEEDING TO ALL RIGHTS AND OBLIGATIONS UNDER SUCH CONTRACTS. AS OF JULY 1, 2024, ANY CASH FUNDS, CUSTODIAL FUNDS, TRUSTS, GRANTS, AND APPROPRIATIONS OF FUNDS FROM PRIOR STATE FISCAL YEARS OPEN TO SATISFY OBLIGATIONS INCURRED UNDER SUCH CONTRACTS ARE TRANSFERRED AND APPROPRIATED TO THE DEPARTMENT FOR ALLOCATION TO THE CDOO FOR THE PAYMENT OF SUCH OBLIGATIONS.

6.1.5.2 Detailed Transfer of Functions

In 2023, House Bill 23-1283 transferred the functions of the Colorado refugee services program in the department of human services to the office of new americans in the department of labor and employment. See the language in that bill for an example of transferring rights, powers, duties; employees; items of real and personal property; cash funds, custodial funds, and grants; and rules.

6.2 The State Personnel System

When drafting bills involving the state personnel system, a drafter should keep in mind provisions of the state constitution concerning which state employees and officials must be included in the state personnel system and the appointing authority for these employees. The state constitution also includes exemptions from the personnel system.

6.2.1 Constitutional Exemptions

Article XII, section 13 of the state constitution states that the personnel system comprises "all appointive public officers and employees of the state," except those specifically exempted by the constitution. In other words, all state officers and employees, other than elected officials, must be within the personnel system unless constitutionally exempted. The exemptions are for the following categories of persons:

- Members of boards and commissions serving without compensation except per diem and expense reimbursement;
- Certain named boards, including the public utilities commission; the state board of land commissioners; the state parole board; the state personnel board; the Colorado tax commission, which is now the board of assessment appeals; and the industrial commission, which has been abolished;
- Assistant attorneys general;
- Legislative and judicial department members, officers, and employees;

- Employees in the offices of the governor and lieutenant governor whose functions and duties are confined to the administration of those offices;
- Faculty members and certain administrators of educational institutions and departments;
- Appointees to fill vacancies in elective offices;
- One deputy of each elective officer other than the governor and lieutenant governor specified in article IV, section 1 of the state constitution;
- Students and inmates in state educational or other institutions employed therein;
- Subject to the approval of the state personnel director, the following persons from each principal department: Deputy department heads, chief financial officers, public information officers, legislative liaisons, human resource directors, and executive assistants to the department heads; and
- Subject to the approval of the state personnel director, senior executive service employees.

Also exempted are officers specified elsewhere in the state constitution; for instance, cabinet officers who are exempted by article IV, section 22 of the state constitution; the commissioner of insurance, who is exempted by article IV, section 23 of the state constitution; and other officers named in the state constitution, such as the commissioner of mines.

If a bill requires the governor to appoint an individual, with the exception of a cabinet member/executive director, and the sponsor wants the appointed person exempted from the personnel system, the drafter must constitutionally exempt that individual from the personnel system. Such exemption would be made by amendment to the state constitution, proposed in a concurrent resolution (see chapter 10 of this manual for more on concurrent resolutions).

6.2.1.1 Historical Context - Boards and Commission

Two bills from the 1977 session raised the issue of whether the General Assembly can use the general constitutional exemption from the state personnel system for members of boards and commissions receiving only per diem and reimbursement for expenses to create new full-time boards composed of appointed officials outside the personnel system by setting the per diem high enough to attract full-time board members. One of these bills did not pass. The other was in effect for a few years and was not challenged.

However, the better practice is to not create full-time boards exempt from the personnel system without a constitutional amendment.

6.2.1.2 No Administrative Rule

From time to time, people have thought that there may be an administrative rule, either of the state controller or of the state personnel board, that provides that any person who receives more than some specific amount in per diem compensation in any year is presumed to be a full-time employee and therefore subject to the state personnel system. So far as the Office is able to determine, no such rule is currently in effect. Even if such a rule existed, its constitutionality might be in doubt, and the legal question would still remain as to whether the state constitution permits full-time state employment outside the personnel system without specification in article XII, section 13 of the state constitution.

6.2.1.3 Employees vs. Independent Contractors

An attorney general's memorandum dated October 26, 1976, addresses the question of inclusion in the personnel system. That memorandum sets forth criteria for the approval of personal service contracts. This is a slightly different issue since it requires construction of the constitutional provisions governing temporary employment, which is another constitutional exemption from the personnel system. The memorandum reflects the assumption that all "employment," as opposed to contractual relationships, must be according to the constitutional provisions governing the personnel system.

The memorandum distinguishes between "employees" and "independent contractors" and states that an independent contractor, among other things, is not subject to the control of the state as to the means and methods of accomplishing the results of the contractor’s work, selects the contractor' clients and is free to work for one or more during any given interval, determines the time and place work will be performed, generally does not receive regular amounts at stated intervals and may agree to perform specific services for a fixed price, and is usually subject to a temporary contract used primarily where special expertise is required for a definite period to accomplish a limited task.

6.2.2 Appointing Authorities

Article XII, section 13 (7) of the state constitution provides that the head of each principal department is "the appointing authority for the employees of his office and for heads of divisions, within the personnel system, ranking next below the head of such department." Division heads are the appointing authorities for all personnel system positions within their divisions.

Statutory provisions concerning appointments that were enacted prior to 1970, the year article XII, section 13 of the state constitution was adopted, may not conform to the constitution. A drafter should be very careful not to use these statutes as models for new agencies. Instead, use the following as good models: The state housing board and the state director of housing, part 7

of article 32 of title 24, C.R.S., and the civil rights commission and the director of the commission, part 3 of article 34 of title 24, C.R.S.

6.2.2.1 Make Board Head Of Division

Situation: A governor-appointed board or commission is created within a department as a **type 1** or **type 2** entity and the board warrants having a permanent staff. Perhaps an entirely new division is sought. If the new board, which is presumably exempt from the personnel system because its members receive only per diem and expenses, is made the head of the division, the state constitution requires that it also be the appointing authority for all the employees of the division. The board may not want to be involved in this kind of administrative detail (or in other day-to-day administrative duties), which may be an issue for the drafter to raise with the bill sponsor.

6.2.2.2 Make Board Part of Office of Executive Director

Situation: A board is created as a part of the department's executive director's office, in which case the executive director would appoint the staff or, if the staff is to be large enough to warrant a staff director or executive secretary, make that staff director, who would be under the personnel system, the head of the division.

In the latter case, the board's staff director would be appointed by the executive director of the department and not by the board. The statute could specify that the appointment be made only after consultation with the board. *See* section 24-34-302, C.R.S., which requires the executive director of the department of regulatory agencies to give good faith consideration to the recommendations of the civil rights commission before appointing the director of the civil rights division. Another possibility might be to direct that a member of the board sit on any panel convened to interview candidates for the position.

The language of article XII, section 13 (7) of the state constitution, quoted above, might be construed to require that all heads of divisions must be within the personnel system. Although the great majority of division heads are personnel system employees, since there is no exception in article XII, section 13 (2) of the state constitution for the entire class of division heads and such an exception was defeated by the voters at the 1976 general election, this reading would pose problems when a board or commission that is compensated on a per-diem basis is named as the director of a division. This is because such a board or commission, as mentioned above, is presumed to be exempt from the state personnel system. In that case, it would not make sense to read subsection (7) to require commission members to be personnel system employees appointed by the executive director. The alternative under this reading of the "within the personnel system" language is to construe subsection (7) to require that division heads be individuals and not exempt boards or commissions and that such individuals must be within the personnel system.

6.2.2.3 Do Not Make Executive Director a Division Director or Vice Versa

It may be problematic for the executive director of a principal department who is not within the state personnel system to also hold the office of division director or, conversely, to have a division director act ex officio as the head of a department. The state constitution does not seem to contemplate this kind of arrangement. For instance, how can an executive director who is exempt from the personnel system appoint themself to a position within the personnel system? Could the governor designate someone who already holds a personnel system position as the head of a division to fill the exempt position of department head? Furthermore, in a wholly new department, how could a division head exist without there having been an executive director appointed previously?

The three examples of this problem that appeared in the statutes were altered to conform to the constitution in 1971. The executive director of the department of health (now known as the department of public health and environment) was ex officio the head of the division of administration, the executive director of the department of labor and employment was ex officio the director of the division of labor (now known as the division of labor standards and statistics), and the chief engineer was ex officio the head of the state department of highways (now known as the department of transportation).

In spite of the apparent absurdity of these situations, at least one example exists in current law. Section 24-30-1001, C.R.S., enacted in 1976 and amended numerous times since then, requires that the executive director of the department of personnel be the head of the office of administrative courts. This case, however, is to be distinguished from the situation in which a position may exist but has not in fact been funded.

6.3 Sunrise Laws

"Sunrise" describes the administrative and legislative procedure for evaluating the request that an unregulated professional or occupational group be regulated by the state of Colorado. The process is governed by section 24-34-104.1, C.R.S.

For an example of a sample sunrise review, see the 2022 report on certified midwives.

If a drafter is asked to draft a bill that involves new regulation of a profession or occupation not previously regulated, the drafter should consult with the sponsor about the applicability of section 24-34-104.1, C.R.S., which requires that anyone proposing new regulation submit certain information to the department of regulatory agencies for sunrise review. The determination of the need for new regulation is based upon the following criteria:

1. Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public and whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument;

2. Whether the public needs, and can be reasonably expected to benefit from, an assurance of initial and continuing professional or occupational competence;

3. Whether the public can be adequately protected by other means in a more cost-effective manner; and

4. Whether the imposition of any disqualifications on applicants for licensure, certification, relicensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

Once the department of regulatory agencies receives a proposal for the regulation of an unregulated professional or occupational group, section 24-34-104.1, C.R.S., requires the department to submit a report to the proponents of the regulation and the General Assembly no later than:

- June 30 of the following year in which the proposed regulation was submitted, for a proposed regulation submitted on or after July 1 and on or before December 31; and

- December 31 of the same year in which the proposed regulation was submitted, for a proposed regulation submitted on or after January 1 and on or before June 30.

Legislation to regulate a professional or occupational group may be presented to the General Assembly during each of the two regular sessions that immediately succeed the date of the report. While failure to comply with the statutory procedure probably does not invalidate a bill for new regulation, the sponsor should be aware that the issue could arise.

The department of regulatory agencies may decline to conduct reviews if:

- The department previously conducted an analysis and issued a report not more than 36 months before the repeat application and the proponents provided no new information;

- The proposed regulation would regulate fewer than 250 individuals; or

- The department determines that at least 33 other states regulate members of the same professional group.

If the department of regulatory agencies receives a proposal to regulate a profession or occupation indicating, based on verified documentation, that the unregulated profession or occupation poses an imminent threat to public health, safety, or welfare, the department is required to notify the proponents and the legislative council of the General Assembly of the threat and to submit documentation of its findings. The legislative council is required to hold a

hearing to examine the report and the department's findings and must consider whether regulating the profession without obtaining the department's evaluation would substantially alter the regulation's threat to the public health, safety, or welfare. See section 24-34-104.1, C.R.S., for more information about the legislative council's role in the hearings.

See section 6.4 Sunset Laws for instruction on including sunset provisions in a bill that creates a new regulatory scheme.

6.4 Sunset Laws

- Colorado Law Summary: The Sunset Process: Legislative Review of Regulatory Agencies And Functions
- Sunset Bill Checklist

6.4.1 General Information

"Sunset" involves the periodic review of state agencies that regulate professions or occupations, specific functions, and advisory committees. To say that an agency, function, or committee "sunsets" means that it is scheduled to repeal on a specified date unless the General Assembly adopts a bill to continue it.

The department of regulatory agencies reviews the agency, function, or advisory committee prior to its scheduled repeal and, prior to October 15 of each year, submits its sunset report to the General Assembly with recommendations about whether the agency, function, or advisory committee should be continued and, if so, whether changes should be made to the law governing the agency, function, or advisory committee. The process for sunset review of agencies and functions is governed by section 24-34-104, C.R.S. The sunset review of advisory committees is governed by section 2-3-1203, C.R.S.

In an effort to maintain consistency in the sequence of termination dates for divisions, boards, and agencies subject to the sunset law, sections 2-3-1203 and 24-34-104, C.R.S., have various subsections categorized by date of repeal; the subsections are further broken down by each board or agency being repealed.

The repeal language in the "organic statute," the statute where the board or committee is created, should be the last section or subsection in the article, part, or section that creates the entity. The headnote in the organic statute that repeals the entity should always include: "**- repeal.**"

Iit can be helpful, though it is not required, to include the phrase "subject to review" or "review of functions" or "sunset review" after "repeal". For example: "**Repeal of article - subject to review.**"

6.4.1.1 Agencies and functions

Section 24-34-104 (4), C.R.S., states that:

- An agency or function that already exists may be continued for up to 15 years before it sunsets again; and
- Newly created agencies or functions must sunset within 10 years.

6.4.1.2 Advisory committees

Section 2-3-1203 (1)(a), C.R.S., states that:

- An advisory committee that already exists may be continued indefinitely; and
- Newly created advisory committees must sunset within 10 years.

6.4.1.3 Select Correct Provision

When creating a new subsection in section 24-34-104 or 2-3-1203, C.R.S., select the subsection indicated for the specified year in the charts in section 6.4.1.5 of this chapter (this keeps the years in sequence and avoids multiple subsections with the same repeal date). Subsections are whole numbers in chronological order. To maintain chronological order, skip subsection numbers if necessary so that they can be used later.

6.4.1.4 Reserved Subsections

Subsection numbers that are skipped will be shown as "reserved" for later use. Subsections will be reserved in the publications process. A sunset bill does not need to reserve a subsection.

(37) (Reserved).

If a bill is adding a subsection that is shown as "Reserved" in the statutes, the amending clause instruction is "add" not "amend." The word "Reserved" is editorial and doesn't need to be amended out.

Using Reserved Number - Example

SECTION 1. In Colorado Revised Statutes, 24-34-104, **add** (37) as follows:

If the year in which the agency or function is set to be repealed isn't yet in statute, a drafter may have to create a new subsection. Make sure that the new subsection is a whole number and not a ".5." New subsections will continue to be added, consistent with the previous subsections, to add future years.

6.4.1.5 Sunset Date Charts

24-34-104 Chart

All entities should repeal on September 1 to avoid the need for a safety clause in the sunset bill.

Subsection	Year Agency Repeals	Year Subsection Repeals
(27)	2026	2028
(28)	2027	2029
(29)	2028	2030
(30)	2029	2031
(31)	2030	2032
(32)	2031	2033
(33)	2032	2034
(34)	2033	2035
(35)	2034	2036
(36)	2035	2037
(37)	{reserved for 2036}	2038
(38)	2037	2039
(39)	2038	2040
(40)	2039	2041

2-3-103 Chart

While some advisory committees created in the past may repeal in July, committees should repeal in September. If a bill is continuing an advisory committee, the repeal date should be changed from July 1 to September 1 to avoid the need for a safety clause in the future.

Subsection	Month	Year Agency Repeals	Year Subsection Repeals

(17)	Sept.	2026	2028
(18)	July	2027	2029
(18.5)	Sept.	2027	2029
(19)	Sept.	2028	2030
(20)	Sept.	2029	2031
(21)	Sept.	{reserved for 2030}	2032
(22)	Sept.	2031	2033
(23)	July	2032	2034
(23.5)	Sept.	2032	2034
(24)	Sept.	2033	2035
(24.5)	Sept.	2033	2035
(25)	Sept.	2034	2036
(26)	Sept.	2035	2037
(27)	Sept.	2036	2038
(28)	Sept.	2037	2039

6.4.2 Create new board, division, or agency

A drafter who creates a new board, division, or agency in the department of regulatory agencies must use the canned language below to:

- Add language indicating that section 24-34-104, C.R.S. is applicable to the new entity; and
- Add language to section 24-34-104, C.R.S., specifying the repeal date.

See the Sunset Process, Repeals & Review - Full Explanation - Canned Language for more explanation and examples.

6.4.2.1 Section 1

For this example, the drafter is creating a new article for the board. A drafter can also create a new part or a new section. As you'll see in examples throughout this section, sometimes drafters will make section 1 of the sunset bill the change to section 24-34-104 or 2-3-1203, C.R.S. The Office doesn't dictate which type of content should be in section 1.

SECTION 1. In Colorado Revised Statutes, **add** article [__] as follows:

ARTICLE #

Article Name

12-#-###. Short title. THE SHORT TITLE OF THIS ARTICLE XX IS THE "___ ACT".

12-#-###. Definitions. AS USED IN THIS ARTICLE XX, UNLESS THE CONTEXT OTHERWISE REQUIRES:

[text of the bill has been omitted for this example]

12-#-###. Repeal of article - subject to review. THIS [ARTICLE XX] IS REPEALED, EFFECTIVE [DATE]. BEFORE THE REPEAL, THIS [ARTICLE XX] IS SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION 24-34-104.

6.4.2.2 Section 2

Use one of the following for section 2 of the bill. If the sunset repeal date already exists in section 24-34-104, C.R.S., use **Section 2 Option A**. If the sunset repeal date does not already exist in section 24-34-104, C.R.S., use **Section 2 Option B**. For this example, assume that the regulation is set to sunset in 2037.

Section 2 Option A

SECTION 2. In Colorado Revised Statutes, 24-34-104, **add** (38)(a)(II), as follows:

24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal. (38)(a) The following agencies, functions, or both, are scheduled for repeal on September 1, 2037:

(II) THE REGULATION OF [__] BY THE [NAME OF ENTITY] IN ACCORDANCE WITH [C.R.S. SUBDIVISION].

OR

(II) THE REGULATION OF PERSONS [SPECIFY THE PARTICULAR TYPE OF REGULATION] PURSUANT TO [C.R.S. SUBDIVISION].

Section 2 Option B

SECTION 2. In Colorado Revised Statutes, 24-34-104, **add** (__) as follows:

24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal. (__)(a) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, ARE SCHEDULED FOR REPEAL ON SEPTEMBER 1, [YEAR]:

(__) THE REGULATION OF [__] BY THE [NAME OF ENTITY] IN ACCORDANCE WITH [C.R.S. SUBDIVISION].

OR

(__) THE REGULATION OF PERSONS [SPECIFY THE PARTICULAR TYPE OF REGULATION] PURSUANT TO [C.R.S. SUBDIVISION].

OR

(__) THE FUNCTIONS OF THE [NAME OF ENTITY] RELATED TO [__] SPECIFIED IN [C.R.S. SUBDIVISION].

OR

(__) THE [NAME OF ENTITY] CREATED IN [C.R.S. SUBDIVISION].

AND

(b) THIS SUBSECTION (__) IS REPEALED, EFFECTIVE SEPTEMBER 1, 20__[YEAR THAT IS TWO YEARS LATER THAN IN SUBSECTION (a)].

Newly Regulated Profession - Example

In 2019, the department conducted a sunrise review of radon measurement and mitigation specialists. In 2021, the General Assembly passed a bill, House Bill House Bill 21-1195, that created a regulatory framework for radon professionals. The following are provisions from the bill:

SECTION 1. In Colorado Revised Statutes, **add** article 165 to title 12 as follows:

...

12-165-113. Repeal of article - review of functions. THIS ARTICLE 165 IS REPEALED, EFFECTIVE SEPTEMBER 1, 2027. BEFORE THE REPEAL, THIS ARTICLE 165 IS SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION 24-34-104.

SECTION 2. In Colorado Revised Statutes, 24-34-104, **add** (28)(a)(V) as follows:

24-34-104. general assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal. (28) (a) The following agencies, functions, or both, are scheduled for repeal on september 1, 2027:

(V) THE REGULATION OF RADON PROFESSIONALS LICENSED IN ACCORDANCE WITH ARTICLE 165 OF TITLE 12.

6.4.3 Continue board, division, agency, or advisory committee

When an agency or function subject to the sunset law is continued, the drafter must:

- Repeal the existing provision listing the agency or function in section 24-34-104, C.R.S., and relist the agency or function in a new provision with the appropriate repeal date; and
- Amend the repeal date in the statute where the agency or function is created

Similarly, when an advisory committee is continued, the drafter must repeal the existing provision listing the advisory committee in section 2-3-1203, C.R.S., and relist the advisory committee in a new provision with the appropriate repeal date.

Note: Although the life of a newly created advisory committee cannot exceed ten years before a sunset review, once a sunset review is completed, the advisory board may continue indefinitely. If an advisory board is continued indefinitely, the bill does not need to schedule the advisory committee for review and repeal in a new subsection of section 2-3-1203, C.R.S.

In organic statutes that describe an existing function or regulatory scheme for review, the drafter should not change the description of the function or regulatory scheme in section 24-34-104, C.R.S., when drafting a sunset bill. The canned language was designed to be very broad and is intended to be used in sunrise bills that propose to create a new regulatory scheme. The drafter should not broaden or otherwise modify the scope of review under the sunset process for an existing function or regulatory scheme unless the sunset report recommends it.

6.4.3.1 Continue Board

In this example, the department of regulatory agencies has recommended continuing the regulation of physical therapists and physical therapist assistants and the licensing functions of the state physical therapy board through 2035.

Continue Board - Example

SECTION 1. In Colorado Revised Statutes, **amend** 12-285-132 as follows:

12-285-132. Repeal of part - review of functions. This part 1 and the licensing functions of the board as set forth in this part 1 are repealed, effective ~~September 1, 2024~~ SEPTEMBER 1, 2035. Before the repeal, the licensing functions of the board are scheduled for review in accordance with section 24-34-104.

SECTION 2. In Colorado Revised Statutes, **amend** 12-285-220 as follows:

12-285-220. Repeal of part - review of functions. This part 2 is repealed, effective ~~September 1, 2024~~ SEPTEMBER 1, 2035. Before the repeal, the functions of the board in regulating physical therapist assistants under this part 2 are scheduled for review in accordance with section 24-34-104.

SECTION 3. In Colorado Revised Statutes, 24-34-104, **repea**l (25)(a)(XVIII) and (25)(a)(XIX); and **add** (36) as follows:

24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal. (25) (a) The following agencies, functions, or both, are scheduled for repeal on September 1, 2024:

(XVIII) ~~The licensing of physical therapists by the physical therapy board in accordance with part 1 of article 285 of title 12;~~

(XIX) ~~The certification of physical therapist assistants by the physical therapy board in accordance with part 2 of article 285 of title 12;~~

(36) (a) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, ARE SCHEDULED FOR REPEAL ON SEPTEMBER 1, 2035:

(I) THE LICENSING OF PHYSICAL THERAPISTS BY THE PHYSICAL THERAPY BOARD IN ACCORDANCE WITH PART 1 OF ARTICLE 285 OF TITLE 12;

(II) THE CERTIFICATION OF PHYSICAL THERAPIST ASSISTANTS BY THE PHYSICAL THERAPY BOARD IN ACCORDANCE WITH PART 2 OF ARTICLE 285 OF TITLE 12.

(b) THIS SUBSECTION (36) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2037.

6.4.3.2 Continue Advisory Committee

In this example, the defense counsel on first appearance grant program advisory committee is extended five years, so section 1 of the bill moves the committee to the appropriate subsection in the sunset review statute, and the committee's organic statute is amended to reflect the new repeal date.

Continue Advisory Committee - Example

SECTION 1. In Colorado Revised Statutes, 2-3-1203, **repeal** (14)(a)(VIII); and **add** (19)(a)(II) as follows:

2-3-1203. Sunset review of advisory committees - legislative declaration -definition - repeal. (14) (a) The following statutory authorizations for the designated advisory committees are scheduled for repeal on September 1, 2023:

(VIII) ~~The defense counsel on first appearance grant program advisory committee created in section 24-32-123;~~

(19) (a) The following statutory authorizations for the designated advisory committees will repeal on September 1, 2028:

(II) THE DEFENSE COUNSEL ON FIRST APPEARANCE GRANT PROGRAM ADVISORY COMMITTEE CREATED IN SECTION 24-32-123.

SECTION 2. In Colorado Revised Statutes, 24-32-123, **amend** (5) as follows:

24-32-123. Defense counsel on first appearance grant program advisory committee - report -rules - definition - repeal. (5) This section is repealed, effective September 1, ~~2023~~ 2028. Before its repeal, the grant program advisory committee is scheduled for review in accordance with section 2-3-1203.

6.4.3.3 Add New Date

The following example shows the addition of a new subsection in a sunset section. Sunset bills are an exception to the rule that you can't have a (I) without a (II). Since most years end up with multiple repeals in section 24-34-104, C.R.S., it is easier for the Publications Team to renumber subparagraphs on revision. If a drafter is adding a new subsection, because the agency, function, or committee is being repealed on a date that is not yet in statute, the drafter can add a (I) without a (II).

Add New Date - Example

SECTION 4. In Colorado Revised Statutes, 2-3-1203, **add** (24) as follows:

2-3-1203. Sunset review of advisory committees - legislative declaration - definition - repeal. (24) (a) THE FOLLOWING STATUTORY AUTHORIZATIONS FOR THE DESIGNATED ADVISORY COMMITTEES WILL REPEAL ON SEPTEMBER 1, 2033:

(I) THE LEGISLATIVE OVERSIGHT COMMITTEE FOR COLORADO JAIL STANDARDS CREATED IN SECTION 2-3-1901.

(b) THIS SUBSECTION (24) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2035.

6.4.3.4 Continue Indefinitely

In the example below, the department of regulatory agencies recommended that the school safety resource center advisory board should be continued indefinitely, meaning it would no longer need to be reviewed, so the school safety resource center advisory board is repealed from section 2-3-1203, C.R.S., and a new sunset review date is not added.

Continue Indefinitely - Example

SECTION 1. In Colorado Revised Statutes, 2-3-1203, **repeal** (13)(a)(IV) as follows:

2-3-1203. Sunset review of advisory committees - legislative declaration - definition - repeal. (13) (a) The following statutory authorizations for the designated advisory committees will repeal on September 1, 2022:

(IV) ~~The school safety resource center advisory board created in section 24-33.5-1804;~~

SECTION 2. In Colorado Revised Statutes, 24-33.5-1804, **repeal** (6) as follows:

24-33.5-1804. School safety resource center advisory board - created. (6) (a) ~~This section is repealed, effective September 1, 2022.~~

(b) ~~Prior to said repeal, the advisory board appointed pursuant to this section shall be reviewed as provided in section 2-3-1203, C.R.S.~~

6.4.3.5 Update Outdated Language

In 2016, section 24-34-104, C.R.S., was repealed and reenacted in order to make the section easier to work with and to create self-repealing subdivisions. At the same time, some of the language in the canned language format for sunset bills was modified; however, the changes to the canned language were not incorporated in the 2016 legislation. If necessary, a sunset bill should update existing language to reflect the updated canned language. In the example below, the department of regulatory agencies has recommended continuing the office of boxing and the Colorado state boxing commission through 2026, and the drafter needs to update the language in the following statutes:

Update Outdated Language - Example

SECTION 1. In Colorado Revised Statutes, **amend** 12-10-111 as follows:

12-10-111. Repeal of article. ~~(1)~~ This ~~article~~ ARTICLE 10 is repealed, effective ~~July 1, 2017~~ SEPTEMBER 1, 2026.

~~(2) Prior to such~~ BEFORE THE repeal, the office and the commission ~~shall be reviewed as provided for~~ ARE SCHEDULED FOR REVIEW IN ACCORDANCE WITH section 24-34-104. ~~C.R.S.~~

SECTION 2. In Colorado Revised Statutes, 24-34-104, **repeal** (12)(a)(VIII); and **add** (27)(a)(V) as follows:

24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal. (12) (a) The following agencies, functions, or both, will repeal on July 1, 2017:

(VIII) ~~The office of boxing, including the Colorado state boxing commission, created in article 10 of title 12, C.R.S.;~~

(27) (a) The following agencies, functions, or both, will repeal on September 1, 2026:

(V) THE OFFICE OF BOXING, INCLUDING THE COLORADO STATE BOXING COMMISSION, CREATED IN ARTICLE 10 OF TITLE 12.

6.4.4 Let Repeal

If the General Assembly fails to act by bill before an agency, function, or department is repealed, the regulation provided by such state agency goes into a one-year wind up period.

If the General Assembly fails to act by bill to continue an advisory committee, the committee is automatically repealed on the scheduled sunset date.

The General Assembly has two options when making the decision to allow an agency, function, department, or advisory committee to sunset:

- Don’t pass a repeal and "let" it repeal by operation of existing law. If the General Assembly makes this choice, the drafter should check for conforming amendments and consider whether a cleanup bill is needed in a future session, either as part of the Revisor’s Bill or a Statutory Revision Committee Bill, to address any lingering references to the body or function.

- Pass a bill to repeal the agency, function, department, or advisory committee and include conforming amendments to help clean up the statutes. The drafter should repeal the provision in either section 2-3-1203 or 24-34-104, C.R.S., where the former repeal date is set out, regardless of whether the agency, function, or advisory committee is being extended or repealed, so that the intent of the legislature is clear.

If the sponsor asks the drafter to prepare a bill terminating an agency or its functions at a time other than the regularly scheduled termination date in section 24-34-104, C.R.S., it is important for the drafter to ascertain from the sponsor the desired result.

For example, is the statutory function to be completely abolished? Or are the functions to be assumed by another administrative unit? The drafter should determine whether all the powers, duties, and functions of an agency should be repealed, transferred elsewhere, or assumed by some other entity and what provisions, if any, are to be made for staff, property, records, and so forth. This may involve changing the Administrative Organization Act in article 1 of title 24, C.R.S. See sections 6.1.2 through 6.1.5 of this chapter for more information.

The provisions of the law creating the agency may have to be repealed, as well as any provisions that are so closely tied to the agency as to have no meaning or effect if the agency is gone. Additionally, the paragraph listing the agency in section 24-34-104, C.R.S., should be repealed, and care should be taken to ensure that this repeal is effective on the same date as the repeal of the provisions creating the agency.

Repeal Agency - Example

In 2022, the department of regulatory agencies' sunset report recommended sunsetting the EPIC (evidence-based practices implementation for capacity) advisory board. Senate Bill 23-073 reads, in part:

> **SECTION 1.** In Colorado Revised Statutes, 24-33.5-514, ... **repeal** (2) as follows:
>
> **24-33.5-514. Evidence-based practices implementation for capacity program - EPIC fund - creation - repeal**. (2) ~~(a) There is hereby created in the division the EPIC advisory board, referred to in this section as the "board".~~
>
> ~~(b) The board shall exercise its powers and perform its duties and functions under the department of public safety.~~
>
> **SECTION 2.** In Colorado Revised Statutes, 2-3-1203, **repeal** (14)(a)(II) as follows:
>
> **2-3-1203. Sunset review of advisory committees - legislative declaration - definition - repeal.** (14) (a) The following statutory authorizations

for the designated advisory committees are scheduled for repeal on September 1, 2023:

(II) ~~The EPIC advisory board created in section 24-33.5-514 (2), C.R.S.;~~

6.4.5 Reestablish after Wind-up

When a board or agency is in its wind-up period under sunset and is technically repealed, it is reestablished rather than continued. The entire section, part, or article must be recreated and reenacted.

Reestablish Regulation after Wind-up - Example

In 2021, the General Assembly ran a bill, Senate Bill 21-003, to recreate and reenact the regulation of occupational therapists, which entered its wind-up period in 2020. The bill recreated and reenacted all of article 270 of title 12, C.R.S., in small capital letters and included any changes the General Assembly elected to make to the regulatory scheme.

CONCERNING THE RECREATION AND REENACTMENT, WITH AMENDMENTS, OF THE "OCCUPATIONAL THERAPY PRACTICE ACT", AND, IN CONNECTION THEREWITH, REESTABLISHING THE LICENSING FUNCTIONS OF THE DIRECTOR OF THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES REGARDING OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS.

SECTION 1. In Colorado Revised Statutes, **recreate and reenact, with amendments,** article 270 of title 12 as follows:

6.4.6 Only One Agency

In working with bills either continuing or reestablishing a division, board, or agency, the drafter should give special attention to section 24-34-104 (7)(a), C.R.S., which provides that "... a committee of reference may not continue, reestablish, or amend the functions of more than one division, board, or agency in any one bill for an act, and the title of the bill must include the name of the division, board, or agency." When drafting and checking bills that continue a division, board, or agency subject to termination under the Sunset Law in section 24-34-104, C.R.S., the drafter should include in the title of the bill some mention of the name of the division, board, or agency.

6.4.7 Sunset Bill Process

The process for a committee approving a sunset bill is similar to a committee approving an interim committee bill. The sunset bill is heard in a committee in draft form prior to introduction; however:

- Bills are assigned to a standing committee of reference, not an interim committee; and
- Sponsors in the chamber of origin are assigned in committee, but sponsors in the second chamber are assigned by the president of the Senate or the speaker of the House, whichever is the opposite chamber of introduction.

The OLLS sunset coordinator:

- Notifies the speaker or president about sunset bills and requests an assignment to a committee of reference in the chamber of origin;
- Notifies drafters of the committee assignments; and
- Requests second chamber sponsors from the president or speaker, as applicable.

Before draft bills are assigned to committee, the sponsorship box should read, in bold:

Sunset Process - House [or Senate] _____ Committee

Once the committee name is assigned, replace the blank line with the committee of reference. Do this before the bill is heard in committee.

Sections 24-34-104 and 2-3-1203, C.R.S., require that bills recommended for consideration be introduced in the House in even-numbered years and in the Senate in odd-numbered years.

6.4.8 Sponsors, Titles, & Endings

6.4.8.1 Sponsorship

The chair of each legislative committee of reference who recommends a bill for introduction assigns one or two members of the committee of reference as prime sponsors.

Other committee members may volunteer to be sponsors on the bill. Members of the General Assembly who are not members of the committee can be sponsors if approved by a majority vote of the committee's members.

A member can only be a prime sponsor on two sunset bills that deal with section 24-34-104, C.R.S., each session. This limit does not apply to second chamber prime sponsors or to sunset bills that deal with section 2-3-1203, C.R.S.

6.4.8.2 Titles

As explained in section 6.4.6 of this chapter, the title of a sunset bill must include the name of the division, board, or agency. Putting the name of the agency in the title, rather than the trailer, means it will survive any changes to the trailer as the bill is amended and moves between chambers.

Reference the department of regulatory agencies' recommendation in the trailer, per the title template below, not in the title's single subject. The first draft of the bill that is heard in committee, prior to introduction, is required to start with only the department's recommendations that are in the sunset report. The bill may be amended in the sunset hearing that happens before introduction or later in the legislative process. Therefore, the part of the title that comes before the trailer should not limit the subject (or purpose) of the bill to the department's recommendations.

Drafters do have some leeway with the language in the trailer. There are a number of examples below that show how a drafter might make small changes to the trailer.

There is canned language in section 6.4.8.2.1 of this chapter and in the canned language macro that drafters can use to create the title. It can be found using this button:

6.4.8.2.1 Title Template

> CONCERNING THE CONTINUATION OF THE [NAME OF AGENCY/FUNCTION], AND, IN CONNECTION THEREWITH, IMPLEMENTING THE RECOMMENDATIONS OF THE DEPARTMENT OF REGULATORY AGENCIES IN THE DEPARTMENT'S [YEAR] SUNSET REPORT.

Note: If the department of regulatory agencies only has one recommendation (for example, to continue the office indefinitely or extend the repeal date of an agency by a number of years), the word "recommendations" in the template above should be changed to "recommendation."

Department in Single Subject - Example 1

> CONCERNING THE CONTINUATION OF THE REGULATION OF NATUROPATHIC DOCTORS BY THE DIRECTOR OF THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES, AND, IN CONNECTION THEREWITH, IMPLEMENTING THE DEPARTMENT'S SUNSET REVIEW RECOMMENDATIONS.

Year in Trailer - Example 2

> CONCERNING THE CONTINUATION OF THE REGULATION OF PRENEED FUNERAL CONTRACTS, AND, IN CONNECTION THEREWITH, IMPLEMENTING THE RECOMMENDATIONS CONTAINED IN THE 2021 SUNSET REPORT BY THE DEPARTMENT OF REGULATORY AGENCIES.

Sunset Program - Example 3

> CONCERNING THE CONTINUATION OF THE SECOND CHANCE SCHOLARSHIP PROGRAM, AND, IN CONNECTION THEREWITH, IMPLEMENTING THE RECOMMENDATION OF THE DEPARTMENT OF REGULATORY AGENCIES IN THE DEPARTMENT'S 2021 SUNSET REPORT TO SUNSET THE PROGRAM.

NOTE: In Example 3, the recommendation was to sunset the scholarship program, but the title still says "Concerning the continuation...," which is correct. Information about sunsetting the program is in the trailer.

6.4.8.3 Ending Clauses

The standard repeal date for a sunset provision (since 2009) is September 1 of the year the provision is scheduled for repeal because that allows sunset bills to have an act subject to petition clause instead of a safety clause.

However, a bill extending an agency, function, or advisory committee that has a repeal date that will take effect July 1 or on a date earlier than 90 days after the end of the legislative session must have a safety clause. Without the safety clause, the act would not take effect until after the date the agency repeals.

For example, a sunset bill might extend the scheduled repeal date of an agency from July 1, 2023, to September 1, 2033. If the drafter uses an act subject to petition clause, then the agency would still repeal on July 1, 2023, because, according to the petition clause, the bill extending the repeal date wouldn't take effect until 90 days after session ends – which would likely be sometime in August of 2023. By that time, the agency would have already repealed on July 1.

A bill continuing an agency, function, or advisory committee that has a repeal date of September 1 or a date later than 90 days after the end of the legislative session does not need a safety clause and should have an act subject to petition clause.

NOTE: When drafting amendments to sunset bills, be aware of potential issues with the safety or act subject to petition clause and any deadlines in the bill.

6.4.9 Bill Summaries

This section includes examples of sunset bill summaries based on the content of the bill. These are intended to be models; the language in these examples do not reflect language drafters are required to use.

6.4.9.1 Simple Continue or Repeal - Draft or Introduced

If the bill is only continuing or repealing the program, agency, etc., and making no other changes, the drafter may wish to use the following bill summary model:

> **Sunset Process - House Education Committee.** The bill implements the recommendation of the department of regulatory agencies in its 2020 sunset review and report on the second chance scholarship program by repealing the program.

6.4.9.2 Continue or Repeal with Changes - Draft or Introduced

> **Sunset Process - House Health and Insurance Committee.** The bill implements the recommendations of the department of regulatory agencies' sunset review and report on the functions of the state board of chiropractic examiners (board) by:
>
> - Continuing the board for 9 years, until 2029 (**sections 1 and 2** of the bill);
> - Repealing the requirement that members of the board be citizens of the United States (**section 3**);
> - Clarifying that a license is not required for a chiropractic student or intern to perform chiropractic services in this state while under the supervision of a licensee (**section 4**); and
> - Allowing chiropractic students at board-approved schools to perform supervised chiropractic services with the signed, written consent of the patient (**section 5**).

6.4.9.3 With Recommendations - Bill Draft Only

A drafter may use the phrase "recommendation [#]" in a bill summary in a bill draft to help the committee compare the bill draft to the sunset report. If the committee decides to introduce the bill, the "recommendation [#]" language should be removed. Do not write "recommendation [#]" language in bold in the bill summary. While there are no other strict rules about how to format the "recommendation [#]" language, make sure the drafter formats the language consistently throughout the bill summary.

A drafter is not required to include "recommendation [#]" language. Recommendation language should be removed before introduction.

Bill Summary - Example 1

> **Sunset Process - House Business Affairs and Labor Committee.** The bill implements the recommendations of the department of regulatory agencies in its 2021 sunset review and report on the division of gaming (division) in the department of revenue. Specifically:
>
> - **Sections 1 and 2** of the bill continue the division for 11 years, until 2033 (*recommendation 1*);
> - **Section 3** allows the Colorado limited gaming control commission to delegate licensing duties to the division (*recommendation 2*); and
> - **Sections 4 through 14** subjects payments of sports wagering winnings to the "Gambling Payment Intercept Act" (*recommendation 6*).

Bill Summary - Example 2

> **Sunset Process - House Business Affairs and Labor Committee.** The bill implements the recommendations of the department of regulatory agencies in its 2021 sunset review and report on the division of gaming (division) in the department of revenue. Specifically:
>
> - **Sections 1 and 2** of the bill implement a portion of r*ecommendation 1* of the report by continuing the division for 11 years, until 2033;
> - **Section 3** implements *recommendation 2* by allowing the Colorado limited gaming control commission to delegate licensing duties to the division; and
> - **Sections 4 through 14** implement *recommendations 3 through 6* by subjecting payments of sports wagering winnings to the "Gambling Payment Intercept Act".

6.4.10 Sunset Bill Draft Structure

A sunset bill draft may note in the substantive provisions which department of regulatory recommendations each bill section is implementing. This format may only be used in draft bills; the introduced bill should not reference the department's recommendations.

Recommendations in Bill - Example

Recommendation 1

SECTION 1. In Colorado Revised Statutes, 24-34-104, **repeal** (23)(a)(VII); and **add** (34)(a)(VII) as follows:

24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal. (23)(a) The following agencies, functions, or both, are scheduled for repeal on September 1, 2022:

(VII) ~~The division of gaming created in part 2 of article 30 of title 44;~~

(34) (a) The following agencies, functions, or both, are scheduled for repeal on September 1, 2033:

(VII) THE DIVISION OF GAMING CREATED IN PART 2 OF ARTICLE 30 OF TITLE 44.

SECTION 2. In Colorado Revised Statutes, **amend** 44-30-206 as follows:

44-30-206. Repeal of division -review of functions. U~~nless continued by the general assembly,~~ This part 2 is repealed, effective ~~September 1, 2022, and those powers, duties, and functions of the director specified in this part 2 are abolished. The provisions of section 24-34-104 (2) to (8) concerning a wind-up period, an analysis and evaluation, public hearings, and claims by or against an agency apply to the powers, duties, and functions of the director of the division~~ September 1, 2033. Before the repeal, the division of gaming is scheduled for review in accordance with section 24-34-104.

Recommendation 2

SECTION 3. In Colorado Revised Statutes, **amend** 44-30-507 as follows:

44-30-507. Delegation of licensing duties. The commission, at its discretion, may delegate licensing duties described in this part 5 to the division. ~~the authority to issue permanent and temporary support and key employee licenses, but the commission shall review and approve the issuance of all other licenses issued pursuant to this article 30.~~

6.4.11 Amending Sunset Bills

Amendments to sunset bill drafts that will be considered in the sunset committee hearing before introduction should be formatted like amendments to interim committee bills. Members of the committee hearing sunset bills may request amendments to the finalized bill drafts for consideration when the draft is heard in committee.

6.4.11.1 Sunset Amendment Example

The following shows a portion of an amendment:

LLS NO. 22-0316.01_AMENDMENT # 1
SUNSET COMMITTEE AMENDMENT
Committee on Health and Insurance
BY REPRESENTATIVE Kennedy
LLS No. 22-0316 be amended as follows:

Amend LLS No. 22-0316, page 2, strike lines 10 and 11 and substitute:

"**SECTION 2.** In Colorado Revised Statutes, 24-25-102, **amend** (1) and (7); and **add** (8) as follows:

24-25-102. Colorado interagency working group on school safety - creation - membership - operation - immunity. (1) There is hereby created in the department OF PUBLIC SAFETY the Colorado interagency working group on school safety, referred to in this article 25 as the "working group". The working group has the powers and duties specified in this article 25.

6.4.11.2 Common Errors in Sunset Amendments

Two types of errors commonly occur in amendments to sunset bills. Be sure to watch for these errors when amending a sunset bill.

Error # 1

Amending a bill to change the future repeal date in the organic statute, meaning the statute where the program, board, etc., is created, but forgetting to change the date in section 24-34-104 or 2-3-1203, C.R.S., or vice versa.

Remember to ensure that any amendments to the repeal date are made in all the sections where the date is set out. This may include a title change if the date or number of years is referenced in the title.

Error # 2

The amendment strikes the repeal date in the introductory portion in section 24-34-104, C.R.S., or 2-3-1203, C.R.S., and substitutes a new date, rather than replacing that subsection in the bill with the subsection with the correct date or creating a new subsection. See Amendment Error Example below.

Amendment Error - Example

Below is the section of the bill being amended (assume, for this example, that we are adding a new program to be sunsetted – which is why we don't also have a repealed provision):

SECTION 1. In Colorado Revised Statutes, 24-34-104, **add** (34)(a)(IX) as follows:

24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal. (34) (a) The following agencies, functions, or both, are scheduled for repeal on September 1, 2033:

(IX) THE FUNCTIONS OF THE BANKING BOARD AND THE STATE BANK COMMISSIONER RELATED TO MONEY TRANSMITTERS SPECIFIED IN ARTICLE 110 OF TITLE 11.

The amendment is going to change when the functions of the banking board and state bank commissioner are going to sunset. The draft of the amendment with the error reads:

> Amend printed bill, page 1, line 6, strike "2033" and substitute "2035".

Striking the date and substituting a new date here effectively alters the termination date for all other agencies or functions listed under the introductory portion – in this example, those agencies or functions that are listed in subsections (34)(a)(I) to (34)(a)(X).

Instead, the amendment should remove subsection (34)(a) from the bill and replace it with the subsection that contains the repeal for September 1, 2035. Remember, you will need to change the amending clause as well.

The correct amendment, in 2023, required adding a new subsection (36) and read:

> Amend printed bill, page 1, line 2, strike "(34)(a)(IX)" and substitute "(36)".
>
> Page 1, strike lines 5 through 9 and substitute "**declaration - repeal.** (36) (a) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, ARE SCHEDULED FOR REPEAL ON SEPTEMBER 1, 2035:
>
> (I) THE FUNCTIONS OF THE BANKING BOARD AND THE STATE BANK COMMISSIONER RELATED TO MONEY TRANSMITTERS SPECIFIED IN ARTICLE 110 OF TITLE 11.

(b) THIS SUBSECTION (36) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2037.

6.4.12 Preparing Sunset Bill Draft for Committee & Introduction

Follow directions in the Sunset Bill Checklist

6.4.13 Further Examples

For more examples of titles, front pages of sunset bill drafts, bill summaries, and the bodies of sunset bills, see section 5.2.14 of the LE Manual.

6.5 Other Special Statutory Considerations

Pursuant to direction from the legislative leadership, the Office is responsible for informing members of bills that are affected by certain statutory requirements in addition to the regular legislative procedures.

Drafters should identify five types of bills subject to special statutory requirements in addition to regular legislative procedures. They are:

- Bills containing mandated health insurance coverage;
- Bills affecting criminal sentencing;
- Bills subject to capital development requirements;
- Bills affecting changes in the number of judges; and
- Bills subject to mandatory continuing education requirements.

If a bill is identified, the Office informs the prime sponsor of the special statutory requirements, attaches a letter to the bill when introduced that indicates the special requirements, and gives a copy of the letter to the chair of the committee of reference to which the bill is referred. Templates for these letters are available in S:\LLS\General Assembly\Mandatory Covers

Additionally, other statutory sections may govern provisions that need to be included in a bil, as discussed in sections 6.5.1 through 6.5.9 of this chapter.

6.5.1 Health Care Coverage Mandates

Section 10-16-103, C.R.S., (statute) requires the submission of a report with any bill mandating a health coverage or offering of a health coverage by a health care coverage (health insurer) entity. The report must address the social and financial impacts of such a requirement, and the statute

sets forth the specifics to be included in the report. The statute is silent on what, if anything, the legislative committee of reference must do with the report. An office memorandum from 1994 detailing how the General Assembly should implement the statute is available here (Guidelines for Determination of Bills Subject to §10-16-103, C.R.S., Concerning Special Legislative Procedures Related to Mandated Health Insurance Coverages in Introduced Bills).

6.5.2 Impacts on Criminal Justice System

Section 2-2-701, C.R.S., requires a bill that is introduced at any session that affects criminal sentencing and that may result in a net increase or a net decrease in periods of imprisonment in state correctional facilities must be reviewed by the director of research of the legislative council for the purpose of providing information to the General Assembly on the long-term impact that may result from the passage of the bill.

Section 2-2-702, C.R.S., requires all bills affecting criminal sentencing that would result in a net increase in periods of imprisonment in a state correctional facility to be assigned or referred to the appropriations committee of the house of origin. Section 2-2-703, C.R.S., requires that any bill introduced after July 1, 2025, that results in a net increase in periods of imprisonment in state correctional facilities must include an appropriation of money sufficient to cover any increased capital construction costs and increased operating costs that are the result of such bill in each of the first five years in which there is a fiscal impact related to the bill. Exceptions to this requirement are permitted if the exception is expressed in the bill itself. The costs of the bill may be offset by corresponding reductions to other criminal sentences in the same bill or some other bill so long as the connection is clearly made.

Examples of statutory appropriations and exceptions from the requirement to comply with this provision can be found in Appendix E of this manual. See section 7.3.4.3 of this manual for more information on the potential placeholder appropriation and the 5-year statutory appropriation language.

6.5.3 Capital Development Committee

Section 2-3-1304 (1), C.R.S., gives the capital development committee jurisdiction for purposes of determining the priority to be accorded proposals made by entities of state government for capital construction, controlled maintenance, and capital asset acquisitions. The committee is to make determinations based upon information available to the committee based on estimates of revenue available for these purposes.

6.5.4 Number of Judges

Article VI, section 10 (3) of the state constitution requires a two-thirds vote of the members of each chamber for passage of bills that increase or diminish the number of district judges. In addition, Joint Rule 23 imposes introduction and passage deadlines for such bills. The Office sends a letter to the committee chair and to leadership about these requirements.

6.5.5 Mandated Continuing Professional Education

Section 24-34-901, C.R.S., requires that information concerning the need for any proposed mandatory continuing education program be submitted to the office of the executive director of the department of regulatory agencies prior to introduction of a bill to mandate the requirement. The executive director analyzes the proposal and files a written report with the General Assembly on whether the requirement would likely protect the public served by the professional group. This law does not apply to occupations that had mandatory continuing education requirements prior to July 1, 1991, or to a bill introduced as a result of an interim committee study. In practice, reports from the executive director on bills imposing a continuing education requirement are usually prepared concurrently with the drafting and introduction of the bill and are considered by a committee of reference when acting on the bill.

6.5.7 Legislative Appointees to Boards, Commissions, and Committees

6.5.7.1 Terms and Service at the Pleasure of Appointing Authority

When creating a board, commission, or committee that authorizes a member of legislative leadership to make appointments to that entity, the drafter needs to talk to the bill sponsor about the sponsor's intent regarding the appointments.

The drafter needs to tell the bill sponsor that section 2-2-325, C.R.S., will operate as the default for the appointees' terms and reappointment unless the sponsor wants to specify different requirements regarding the appointees' terms. If the bill does not make specific provisions, section 2-2-325, C.R.S., will control.

6.5.7.2 Per Diem, Compensation, and Expenses

When creating a state board, commission, or committee that authorizes a member of leadership to appoint legislators to serve on a state entity or when amending a statute to add appointed legislative members to serve on an existing state entity, the drafter needs to talk to the bill sponsor about legislative compensation. The drafter needs to tell the bill sponsor that section 2-2-326, C.R.S., will operate as the default for the payment of compensation and expenses of the

appointed legislators unless the sponsor wants to specify different requirements. The intention of this language was to establish uniform payments of per diem and reimbursement of expenses of legislators serving on state entities. If the bill does not make specific provisions, section 2-2-326, C.R.S., will control.

6.5.8 Cross-Reference Needed When Bill that Grants Power of Eminent Domain

Section 38-1-201, C.R.S., declares that because the use of eminent domain "substantially impacts fundamental property rights ... [it] is necessary and appropriate to ensure that Coloradans can easily determine which governmental entities, corporations, and other persons may exercise the power of eminent domain...".

Section 38-1-202, C.R.S., is supposed to cross-reference **every** state constitutional or statutory provision that grants the power of eminent domain. If a bill grants the power of eminent domain, the drafter should include an appropriate cross-reference in section 38-1-202, C.R.S., and place it under the proper category of entity or person.

6.6 Rule-Making Authority

A bill may authorize a state agency to adopt rules. A drafter may include rule-making authority in a bill when the bill either creates a new state agency or creates a new program within an existing state agency. In drafting such a provision, it is important to keep in mind the subjects discussed in this section 6.6. Examples of statutory provisions authorizing rule-making are contained in Appendix H of this manual.

6.6.1 Delegation of Authority to State Agency - Constitutional Requirements

The General Assembly may delegate to an agency the authority to promulgate rules to carry out the legislative purposes of an act of the General Assembly. In so doing, the General Assembly is delegating **legislative power** to an agency in the executive branch.

Concurrent with such a delegation of legislative power, the General Assembly must include sufficiently clear standards to ensure that the fundamental policy decisions made by the elected legislative representatives of the people will not be altered by agency personnel.[3] Otherwise, the delegation may constitute an unconstitutional delegation of legislative power. The test for

[3] *Dodge v. Department of Social Services*, 657 P.2d 969 (Colo. App. 1982); *Elizondo v. State*, 194 Colo. 113, 570 P.2d 518 (1978).

determining the propriety of a legislative delegation is not simply whether the delegation is guided by standards but whether there are sufficient statutory standards and safeguards, in combination, to protect against the unnecessary and uncontrolled exercise of discretionary power.[4]

A proper statutory grant of rule-making power allows the General Assembly to establish the policy and principles to guide the state agency and gives the state agency rule-making authority to fill in the details that cannot be addressed by the statute. The grant to the agency of rule-making power consistent with the legislative policy and principles is not a delegation of the General Assembly's policy determination function but is at most the delegation of the power to establish rules for the achievement of that policy.

6.6.2 Drafting Considerations

The drafter should consider the factors discussed in this section when drafting a rule-making provision. If changing the rule-making authority of a regulator of a profession or occupation regulated under title 12, C.R.S, review special title 12 provisions in section 6.6.3.2 of this chapter.

6.6.2.1 Avoid Ambiguity

The bill should grant rule-making authority to a specific individual or entity to avoid ambiguity. If the bill authorizes an entity to adopt rules, the bill may need to authorize a specific officer or individual to adopt rules. The entity's organic statute may set forth who has rule-making authority for the entity. There may be existing rule-making provisions for an entity that provide examples of granting rule-making authority to the entity.

Is the rule-making authority mandatory or discretionary? If the rule-making is mandatory, the bill must create a duty for the individual or entity to adopt rules.

6.6.2.2 Review Type of Entity

Determine if the state agency will be or has been created as a **type 1** or a **type 2** entity. Section 24-1-105, C.R.S., and section 6.1 of this chapter describe these types of entities and should be reviewed in connection with this determination. Under section 24-1-105, C.R.S., a **type 1** entity exercises its delegated rule-making power independent of the head of the principal department to which it is allocated, but the power delegated to a **type 2** entity to adopt rules is exercised by the head of the principal department to which the entity is allocated.

Therefore, be aware that a delegation of rule-making authority to a **type 2** entity may raise issues as to whether that delegation is intended to be consistent with section 24-1-105, C.R.S.

[4] *Cottrell v. City and County of Denver*, 636 P.2d 703 (Colo. 1981).

Specifically, it may be unclear whether rule-making is to be performed by the agency itself or by the head of the agency's principal department.

If the delegation of rule-making authority involves a **type 2** entity, the following options should be considered:

- **Delegate to executive director of the principal department.** Rule-making authority may be delegated to the executive director of the principal department in which the **type 2** entity is located. Two examples of such a delegation are as follows:

Delegate to Executive Director - Example

> **#-#-###. Powers and duties of executive director - rules.** (1) In order to perform the executive director's duties, the executive director has the power to:
>
> (a) Adopt rules in accordance with article 4 of title 24 for the controller and the staff of the division of accounts and control in the collection of debts referred to that office, including such matters as referrals to collection agencies or practicing attorneys for out-of-state collection of debts; authority to write off, release, or compromise, authorization of suit filings; and methods of collection of judgments;

- **Delegate to type 1 entity with authority over the type 2 entity.** If, under the circumstances, it is appropriate for the rule-making authority to be held by someone other than the executive director, rule-making authority may be delegated to a **type 1** board, commission, division, etc. having authority over the **type 2** entity. An example of such a delegation is as follows:

Delegate to Type 1 - Example

> **#-#-###. Child care centers - rules.** The state board of health, after consultation with the division in the department of human services involved in licensing child care centers and if the committee formed in section #-#-### recommends the establishment of child care facilities in nursing homes, shall adopt reasonable rules in accordance with article 4 of title 24 establishing any necessary requirements for operating a day care center in a nursing home facility. Such rules must include the following:

- **Delegate to the type 2 entity, with exemption from general rule.** Rule-making authority may be delegated to a **type 2** entity when the delegation contains a specific exception to the general rule in section 24-1-105, C.R.S., that rule-making delegated to a **type 2** entity is to be exercised by the head of the principal department. An example of such a delegation is as follows:

Delegate to Type 2 - Example

> **#-#-###. Division of gaming - creation - rules.** There is created in the department the division of gaming, the head of which is the director of the division of gaming. The director is appointed by, and may be removed by, the executive director. The division of gaming, the Colorado limited gaming control commission created in section #-#-###, and the director of the division of gaming are **type 2** entities, as defined section 24-1-105, and exercise their respective powers and perform their respective duties and functions as specified in this article XX under the department; except that the commission has full and exclusive authority to adopt rules in accordance with article 4 of title 24 related to limited gaming without any approval by, or delegation of authority from, the department.

- **Delegate to specified individual in the type 2 entity.** Rule-making authority may be delegated to a specific person or entity in the **type 2** entity rather than to the agency in general. The delegation to a specific person or entity may be sufficient to override the general rule in section 24-1-105, C.R.S., that rule-making delegated to a **type 2** agency is to be exercised by the head of the principal department. However, the drafter may also want to reinforce this intention by including an express exception, as in the preceding example. An example of such a delegation without an express exception is as follows:

Delegate to Specific Entity - Example

> **#-#-###. Rules.** The director of the division of local government of the department of local affairs after consultation with the affected departments or agencies, if any, may promulgate, adopt, amend, and repeal such rules as may be necessary for the implementation and administration of the grant program.

- **Create a new entity as a type 1 entity instead of type 2 entity.** If the delegation of rule-making authority is to a newly created agency, it may be appropriate to establish the agency as a **type 1** entity instead of a **type 2** entity if the powers, duties, and functions of the agency are actually of a **type 1** variety. If the grant of rule-making authority is in connection with an existing **type 2** entity that actually has **type 1** powers, it may be appropriate to amend the statute and change the entity to a **type 1** entity.

  Note: Rule-making authority may be inappropriate for an advisory committee or board.

6.6.2.3 Breadth of Rule-making Authority

Consider carefully whether a grant of broad rule-making authority is appropriate or will create problems. Potential issues that may arise from broad authority should be raised, even if all

interested parties agree that the agency should be given that authority. Examples of rule-making provisions granting an agency broad authority are provided in Appendix H of this manual.

A drafter should avoid extremely vague grants of rule-making authority such as "The board may adopt rules that are not inconsistent with this article 2." As noted under section 6.6.1 of this chapter, such standardless grants of authority are potentially unconstitutional.

Does the bill sponsor have an idea of specific limits on the agency's rule-making authority? If so, is there a way to tailor the rule-making provision so that it specifically delineates the areas or subjects the rules will address? If possible, get a feel for what the agency intends to do through future rule-making to determine whether it matches the sponsor's intent and draft the provision to specifically target the rule-making authority to those intentions.

6.6.2.4 Future Considerations

Look down the road to the day when the agency's rules may come to the Office during the rule review process. Will it be difficult to determine or understand at that time exactly what authority the agency has for the rule or rules? Try to avoid a situation in which you, as the drafter of the rule-making provision, have to tell a member or agency that there is confusion over what the language means.

6.6.3 Use of Terminology

6.6.3.1 Use of the Term "Rules"

Section 24-4-102 (15), C.R.S., provides that "rule" includes "regulation." Therefore, it is unnecessary to authorize an agency to adopt "rules and regulations". The statutes, however, contain many examples of state agencies or agency directors that are authorized to make or adopt "rules and regulations," "rules," "regulations," "standards," "guidelines," "procedures," etc. These terms have frequently been used interchangeably. Notwithstanding the past use of these various terms, the drafter should use the term "rules" unless another term is clearly warranted. For example, the term "guidelines" may be appropriate when an agency is called upon to describe conduct that is desirable but not required.

Two examples of appropriate terminology in rule-making grants are as follows:

Adopt Rules - Example 1

> **#-#-###. Rules.** The commissioner may adopt rules necessary for the administration and enforcement of this article X. The commissioner shall adopt rules in accordance with article 4 of title 24.

Adopt Rules - Example 2

> **#-#-###. Rules.** (1) In order to carry out the purposes of this part X, the director of the division shall adopt rules in accordance with article 4 of title 24 governing the following:
>
> (a), (b), (c), etc., limiting the subject matter the rules will address.

6.6.3.2 Title 12

When changing the rule-making authority of a regulator of a profession or occupation regulated under title 12, C.R.S., or when adding the regulation of a new profession or occupation to that title, review section 12-20-204, C.R.S., which reads:

> (1) Except as specified in subsection (2) of this section, in addition to any specific rule-making authority that a regulator has pursuant to a part or article of this title 12, a regulator may adopt rules necessary to administer the part or article of this title 12 pursuant to which the regulator has regulatory authority.

If you need to exclude a regulator from the general rule-making authority in subsection (1), you will need to add the article to subsection (2) of that section.

> (2) Subsection (1) of this section does not apply to the following:

6.6.4 Cross-referencing the State Administrative Procedure Act

It is not necessary to include a reference to the "State Administrative Procedure Act" (article 4 of title 24, C.R.S., referred to as "State APA" in this section) in grants of rule-making authority to a state agency.)*See* examples in section 6.6.3.1 of this chapter.) Sections 24-4-103 (1), and 24-4-107, C.R.S., are very clear that any executive branch agency adopting rules must follow the State APA.

However, if a drafter does make a cross-reference to the State APA, the way in which the State APA is referenced will depend on whether the grant of rule-making authority is permissive or mandatory. Examples of permissive and mandatory rule-making follow. The statutes currently contain many cross-references to the State APA. The drafter needs to follow this distinction when editing any existing grants of rule-making authority. To avoid any ambiguity about the intent of any changes to one of these existing grants, the drafter should not delete existing references to the State APA in a statute just to follow the principle that the citation to the State APA is unnecessary.

6.6.4.1 Permissive rule-making

Where the grant of rule-making authority provides that the state agency may make rules, the drafter should specify the grant of authority in a statement separate from the cross-reference to

the State APA. Failure to separate the delegation and cross-reference may result in ambiguity. Two examples of a *correct* delegation of permissive rule-making authority and a cross-reference to the State APA are as follows:

Permissive - Correct Reference - Example 1

> **#-#-###. Rules.** The executive director may adopt rules necessary for the administration of this article 1. Such rules shall be adopted in accordance with article 4 of title 24.

Permissive - Correct Reference - Example 2

> **#-#-###. Rules.** Pursuant to article 4 of title 24, the director may adopt rules necessary for the administration of this part 2 governing (*fill in the subject matter the rules will address*).

An example of an **incorrect delegation** of permissive rule-making authority and a cross-reference to the State APA is as follows:

Incorrect Reference - Example

> **#-#-###. Rules.** The executive director may adopt rules necessary for the administration of this article 3 in accordance with article 4 of title 24.

The example above is incorrect because it could mean that compliance with the State APA is permissive but not mandatory.

6.6.4.2 Mandatory rule-making

Where the grant of rule-making authority provides that the agency shall make rules, the drafter may include a cross-reference to the State APA in the grant as in **Adopt Rules - Example 2** above or the cross-reference may be stated separately as follows:

Mandatory - Correct Reference - Example 1

> **#-#-###. Rules.** The director shall adopt rules for the licensure of applicants under this part X. Such rules shall be adopted in accordance with article 4 of title 24.

Mandatory - Correct Reference - Example 2

> **#-#-###. Rules.** The commissioner shall adopt rules necessary for the administration and enforcement of this article 5 and in accordance with article 4 of title 24.

6.6.5 Ambiguous Statements of Delegation

In referring to administrative rule-making, the drafter should use the verb "adopt" and refer to "rules." If the sponsor wants an agency to engage in formal rule-making, state "The department shall adopt rules.

However, if the sponsor does not want to require rule-making, but wants the agency to establish policies or procedures, the drafter should make that clear by stating that the agency need not adopt the required procedures, standards, or guidelines as rules under the State APA.

6.6.6 Rule Review

When a state agency with statutory rule-making authority adopts rules, it must do so pursuant to the State Administrative Procedure Act, article 4 of title 24, C.R.S. Section 24-4-103 (8)(d), C.R.S., requires the agency to submit those rules to the Office for review to determine whether the rules are within the agency's rule-making authority. A rule that staff determines is not within the agency's constitutional or statutory authority is presented to the Committee on Legal Services for the action prescribed in section 24-4-103 (8), C.R.S.

For more information on Rule Review:

- Legisource Article: Parsing Powers: Legislative Review of State Department Rules
- OLLS webpage on Rule Review
- 2024 Annual Rule Review Bill
- 2024 Memo Explaining Rule Review Bill
- See the Rule Review training materials folder for more information: S:\LLS\COLS\Rule Review\Rule Review Training\

6.7 Creation of Temporary Entities

Occasionally, drafters are asked to create a temporary board, commission, committee, or task force that is established for a single, one-time-only purpose and that can accomplish its purpose within a relatively short period of time. A temporary board does not include what are normally called "advisory" boards or any other board that has a continuing function. A number of practical problems have arisen in the past when the enabling legislation for such temporary entities was so sketchy that it failed to anticipate the activities and functions needed by the entity. Often the financial expenses of carrying out the functions are not anticipated. The drafter should consider the following issues when creating temporary entities.

6.7.1 Establish Clear Purpose

Establish the clear purpose for the creation of the temporary board (for purposes of this example, "board" is used although it could be called a commission, committee, task force, etc.).

Purposes - Examples in Statute

- The purpose of the health-care services reserve corps task force is to evaluate and make recommendations on the creation of a Colorado health-care services reserve corps program in which medical professionals could be cross-trained to service in emergencies and receive a benefit for their service.
- The purpose of the mandatory reporter task force is to analyze best practices and recommend changes to training requirements and reporting procedures.
- There is created in the office of the respondent parents' counsel created in section 13-92-103 the task force on high-quality parenting time, for the purpose of studying the issues set forth in section 19-3-904 and making findings and recommendations to the governor, the state department; the child welfare training academy, and the general assembly on administrative and legislative changes to improve high-quality parenting time services and practices in dependency and neglect cases.

6.7.2 Membership

The drafter should consider the following issues relating to membership:

1. **Establish the number of members.**
2. **Establish qualifications for appointments (optional):**
    a. Political balance;
    b. Geographic representation;
    c. Ethnic and racial considerations;
    d. Representation from specific groups, occupations, fields of knowledge or training, etc.
3. **Establish how appointments are made and when.**
    a. Designate a specific individual responsible for making the appointment.
    b. In establishing terms and initial staggering:

i. Consider whether you need to establish specific staggering, or whether you can simply direct the appointing authority to stagger the terms based on a formula

ii. If you need to establish initial staggering, consider whether you can do so in a paragraph that repeals, while leaving a general directive for ongoing staggering

iii. When establishing qualifications for appointed members, try to keep those provisions together and place them near the or with the language establishing the membership

iv. For default terms on vacancies and other matters, consult section 24-1-135.5, C.R.S., and adjust those provisions in your statute if necessary

Appointments - Example in Statute

(2) (a) (I) The task force consists of the following voting members:

(A) The director, or the director's designee, who is the chairperson of the task force;

(B) Three public school teachers who are licensed pursuant to article 60.5 of title 22 and employed by a school district in this state from a rural, urban, and suburban district, one public school teacher from a suburban district appointed by the governor and one public school teacher from a rural school district and one public school teacher from an urban school district appointed by the speaker of the house, on the advice of a statewide association that represents teachers.

(C) Two education support professionals, one of whom focuses on English language learning, appointed by the president of senate on the advice of a statewide association that represents education support professionals;

(D) One school support professional licensed pursuant to article 60.5 of title 22, who focuses on addressing mental health at the school level and has an understanding of neurological and development disorders, such as autism, appointed by the governor on the advice of a statewide association that represents education support professionals; and

(E) Two school administrators, who are employed either at the school or district level by a public non-charter school district, one appointed by the speaker of the house of representatives and one appointed by the minority leader of the house, on the advice of a statewide association that represents school executives.

(II) The task force consists of the following nonvoting members:

(A) The commissioner of education or the commissioner's designee;

(B) A representative of the behavioral health administration created in section 27-50-203, appointed by the commissioner of the behavioral health administration; and

(C) A student representing a community disproportionately impacted by school discipline, appointed by the governor.

(b) (I) The appointing authorities shall appoint the task force members by July 31, 2024. Except as provided in subsection (2)(b)(II) of this section, members of the task force serve four-year terms and shall not serve more than two consecutive terms of office.

(II) (A) The initial term of members appointed pursuant to subsections (2)(a)(I)(B) to (2)(a)(I)(D) of this section is two years, and the initial term of members appointed pursuant to subsection (2)(a)(II) of this section is three years.

(B) This subsection (2)(b)(II) is repealed, effective July 31, 2028

(c) A vacancy occurring in the membership of the task force must be filled in the same manner as the original appointment.

(d) A majority of the members of the task force constitutes a quorum for the transaction of business, and a majority of a quorum present at any meeting is sufficient for any official action taken by the task force.

4. Establish chair of board.

Chair of Board - Examples in Statute

- The task force shall elect a chair from among its voting members.
- The task force shall elect a chair and vice-chair from among its members.
- The child protection ombudsman or the child protection ombudsman's designee shall serve as the chair, and the task force shall select a vice-chair from among its members. The chair and the vice-chair shall serve for the duration of the task force as the chair and the vice-chair.
- The elected members shall convene the first meeting of the task force no later than November 1, 2021. At the first meeting, the members shall select a chair and a vice-chair from among the elected members. The elected members shall alternate as chair and vice-chair every year thereafter for the duration of the task force.
- The speaker of the house of representatives shall appoint a chair of the task force.

- Starting in 2021, the task force shall elect a chair and a vice-chair at the first meeting held on or before July 16, 2021. The chair and vice-chair appointments must alternate between a member from the house of representatives and a member from the senate with the first chair being from the senate and the first vice-chair being from the house of representatives. The person serving as chair, or a member of the same house if such person is no longer a member thereof, shall serve as vice-chair during the next legislative session, and the person serving as vice-chair, or a member of the same house if such person is no longer a member thereof, shall serve as chair during the next legislative session.

5. **Establish compensation provisions:**

    a. Can provide that members serve without compensation;

    b. Executive branch officials generally serve without compensation;

    c. If the board has legislative members, they generally get reimbursed for necessary expenses and get the per diem allowed members of interim committees (see section 2-2-326, C.R.S.). Note: this will drive a cost to the state - the cost may be eliminated by putting in language that says the compensation is paid from available appropriations to the General Assembly. The term "compensation" generally covers both per diem and expenses.

    d. If all members are paid compensation, this will drive a fiscal note.

Compensation - Examples in Statute

- The task force members shall serve without compensation but must receive reimbursement for reasonable travel expenses to attend task force meetings.

- If there are legislative members: "Except as otherwise provided in section 2-2-326, the task force members shall serve without compensation but must receive reimbursement for reasonable expenses incurred to participate in task force meetings."

- Nonlegislative members of the task force and nonlegislative members of any subcommittees of the task force serve without compensation. Compensation of legislative members is paid from appropriations to the general assembly.

- Each member of the task force serves without compensation but is entitled to receive reimbursement for actual and necessary expenses the member incurs in the performance of the member's duties as a member of the task force.

- The members of the task force serve without compensation and without reimbursement for expenses.

- Members of the task force serve without compensation. However, members of the task force appointed pursuant to subsection (2)(c) of this section* may receive reimbursement for actual and necessary expenses associated with their duties on the task force. (The members of subsection (2)(c) of said section were the only members of the public on the task force; all other members of the task force were directors or executive directors of departments, divisions, or offices.

6.7.3 Meetings

Establish the minimum number and frequency of meetings (this will affect the fiscal note) and when the first meeting should be held. It is best practice to include whether the entity can meet remotely, to avoid ambiguity or confusion.

Meetings - Examples in Statute

- The task force shall meet at least four times each year and at such other times as it deems necessary. The chair and vice-chair may establish such organizational and procedural rules as are necessary for the operation of the task force.
- The task force shall meet at least four times each year and at such other times as a majority of the voting members of the task force deem necessary.
- No later than July 31, 2023, the chair of the task force appointed pursuant to subsection (3)(a)(II) of this section shall convene the first meeting of the task force. The task force may hold up to twelve meetings in the 2023 legislative interim, which may be in-person or virtual meetings. The task force shall take any action required pursuant to this section by a majority vote.
- The chairperson and vice-chairperson shall convene the first meeting of the task force no later than September 1, 2023. The task force shall meet at least four times in 2023 and at least six times in 2024 to complete the duties specified in section 2-2-2103. The task force shall establish procedures to allow members of the task force to participate in the meetings remotely.

6.7.4 Duties

Establish duties and responsibilities of the board or issues to be studied if needed to supplement the language establishing the purpose and objective of the board.

6.7.5 Staff Support

1. Establish what legislative agencies and/or executive agencies are to provide staff support for the board.

2. Establish whether the legislative agencies and/or executive agencies will need an additional appropriation in order to provide staff support (this may drive a fiscal note - the fiscal note may be eliminated by putting in language that says staff assistance will be provided from available appropriations to the agency). If an appropriation is necessary, an appropriation can be made to all affected agencies or can be made to the lead agency only with that agency making payments to the other affected agencies.

Staff Support - Examples in Statute

- The department of education shall provide information and staff support to the task force upon the request of the task force chairperson to the extent necessary for the task force to complete the duties described in section 2-2-2103.
- The director of research of the legislative council may supply staff assistance to the task force as the director of research deems appropriate, subject to available appropriations. The task force may also accept donations of in-kind services for staff support from the private sector.
- The ONA shall provide administrative staff to support the task force.
- Upon request by the task force, the department shall provide office space, equipment, and staff services as may be necessary to implement this section.
- The legislative council staff shall supply staff assistance, within existing appropriations, to the task force as the committee deems appropriate. If existing appropriations are not adequate to supply staff assistance through the legislative council staff, the director of legislative council staff shall request additional necessary funding in its annual budget request.
- All state and local agencies shall cooperate with the task force and provide such data and other information as the task force may require in carrying out its duties under this section. Any state or local agency or organization that is represented on the task force may provide staff assistance to the task force, subject to the discretion of the chair.
- The executive director of the department may supply staff assistance to the task force as the executive director deems appropriate, subject to available appropriations. The task force may also accept donations of in-kind support services for staff support from the private sector.

6.7.6 Recommendations and Reports

1. Establish to whom the recommendations of the board are to be made and when.
2. Establish in what form the recommendations are to be made.

a. Are the recommendations to be made in the form of a bill or bills?

    i. If in the form of a bill or bills, are they to be presented to the Legislative Council like other interim committee bills and do the rules relating to interim committee bills apply?

b. Are the recommendations to be made in the form of a report?

    i. Is there one report? Does reporting continue indefinitely? Is there a draft report and a final report?

Recommendations & Reports - Examples in Statute

- On or before December 31, 2023, the task force shall report its findings and recommendations made pursuant to this section to the office of the governor and to the general assembly and shall make the report available to the public.
- On or before March 1, 2024, the task force shall submit an interim report, including its initial findings and recommendations on issues identified in subsection (1) of this section, to the education committees of the house of representatives and the senate, or their successor committees; the governor; the state board; the commissioner of education; and the department. On or before November 15, 2024, the task force shall submit a final report, including its findings and recommendations on issues identified in subsection (1) of this section, to the education committees of the house of representatives and the senate, or their successor committees; the governor; the state board; the commissioner of education; and the department.
- The review committee may recommend up to a total of three bills during each interim. Legislation recommended by the review committee must be treated as legislation recommended by an interim committee for purposes of applicable deadlines, bill introduction limits, and any other requirements imposed by the joint rules of the general assembly.
- Notwithstanding section 24-1-136 (11)(a)(I), on or before January 1, 2023, and on or before January 1 every five years thereafter, the state auditor shall review the rate described in subsection (1) of this section and the fee described in section 24-30-202.4 (8)(a) and report the results of the review to the finance committees of the senate and the house of representatives or any successor committees. The report may include any recommendations of the state auditor regarding raising or lowering the rate or the fee.
    - For more information on periodic reporting requirements, see section 6.9 of this chapter.

6.7.7 Sunset Provisions or Termination Dates

Establish a repeal date for the section establishing the board in accordance with sunrise/sunset provisions. Section 2-3-1203 (1)(a), C.R.S., limits the life of a newly created board to ten years. A board that will last fewer than ten years is not subject to the required sunset review process.

If the bill is not subject to sunrise/sunset provisions, the drafter needs to specify a termination date and include the statutory language required for the creation of state boards and commissions as set forth in section 24-3.7-101, C.R.S.

If the bill is subject to sunrise/sunset provisions, the drafter needs to follow the process specified in section 6.3 (sunrise) or section 6.4 (sunset) of this chapter.

6.8 References to Units of Government Not in Statute or to Nongovernmental Entities

As a general rule, a drafter should not refer to a division, section, or unit of state government by name unless that division, section, or unit is created by statute. If a division, section, or unit of state government has been statutorily created, it is most likely included in and the proper name may be found in the Administrative Organization Act of 1968, article 1 of title 24, C.R.S.

However, if a sponsor requests that a bill include a specific reference to an existing division, section, or unit that is not created by statute and has been created administratively, the drafter should include language that makes this fact clear to the reader. For example, the drafter could include a citation to section 24-1-107, C.R.S., which authorizes department heads to establish, combine, or reallocate divisions, sections, or units within their departments. Such a reference would read: "... the division of tax collectors, created pursuant to section 24-1-107." Another option would be to say "... the division in the department responsible for tax collectors."

Similarly, a drafter should not refer to nongovernmental groups or entities in a bill. Such a reference may raise legal issues for the bill. Examples of possible concerns are:

1. Is there a violation of the constitutional prohibition on special legislation in article V, section 25 of the state constitution;
2. Is there a violation of the constitutional prohibition on appropriations to private institutions in article V, section 34 of the state constitution
3. Is there an unlawful delegation in violation of article V, section 35 of the state constitution; and
4. What is the effect if the named organization ceases to exist or changes its name?

Additionally, such a reference might imply that the group or entity can be required to perform certain government-like functions. However, the group or entity cannot be required to continue or begin to perform certain functions.

If a sponsor requests that a bill include a specific reference to such a group or entity, the drafter should use general descriptive terminology. For example, the drafter could include a general reference to groups or entities that perform certain functions. Such a reference would read: "...a contract may be awarded to a nationally organized group or entity that provides services determined by the director to be the equivalent of the services specified in this section" or "a representative of a nonprofit organization that advocates for the homeless may be appointed to the board."

6.9 Periodic Reporting Requirements – Executive Branch Agencies and Judicial Branch

Pursuant to the Information Coordination Act, section 24-1-136 (11), C.R.S., whenever an executive agency or the judicial branch is required to make a report to the General Assembly on a periodic basis, the requirement for the report expires on the day after the third anniversary of the date on which the first report is due to the General Assembly, unless the General Assembly acting by bill continues the requirement.

When drafting a bill that requires periodic reporting, the drafter needs to ask the bill sponsor a policy question about whether the sponsor wants the reporting to go on indefinitely or to be subject to expiration after the third anniversary of the first report pursuant to this statute. If the bill sponsor wants the reporting requirement to continue for a longer period of time or indefinitely, the drafter needs to write that into the bill and should make clear that this is an exception to section 24-1-136 (11)(a)(I), C.R.S.

Exempt Report from Limit - Example

> Notwithstanding the requirement in section 24-1-136 (11)(a)(I), the requirement to submit the report required in this section continues indefinitely.

If the bill sponsor does not intend to have the reporting requirement continue for more than the statutorily defined period, then the drafter should include a repeal of the periodic reporting as shown in the following example.

Repeal Report after Three Years - Example

> (3) (a) The department of education shall submit a report on July 1, 2007, and every July 1 thereafter on the number of grants awarded to local school

districts to improve reading programs and the success of each grant recipient in increasing CSAP reading scores.

(b) Pursuant to section 24-1-136 (11)(a)(I), this subsection (3) is repealed, effective July 1, 2010.

6.10 Judicial Review of Executive Branch Agency Decisions

Section 24-4-106, C.R.S., establishes judicial review of agency actions that adversely affect a person. Special provisions for certain enumerated title 12, C.R.S., actions are explained below. If the bill sponsor wants an alternative form of judicial review, the bill must expressly set out the review process.

6.10.1 Judicial Review of Certain Title 12-Related Actions

Section 12-20-408, C.R.S., is the general provision concerning judicial review that applies to many of the practice acts in title 12, C.R.S. Subsection (1) of that section reads:

(1) Except as specified in subsection (2) of this section, the court of appeals has initial jurisdiction to review all final actions and orders of a regulator that are subject to judicial review and shall conduct the judicial review proceedings in accordance with section 24-4-106 (11); except that, with regard only to cease-and-desist orders, a district court of competent jurisdiction has initial jurisdiction to review a final action or order of a regulator that is subject to judicial review and shall conduct the judicial review proceedings in accordance with section 24-4-106 (3) for the following:

If you need instead for a district court of competent jurisdiction to have initial jurisdiction for an enumerated title 12 action, you will need to add the article to subsection (2) of that section.

(2) A district court of competent jurisdiction has initial jurisdiction to review all final actions and orders of a regulator that are subject to judicial review and shall conduct the judicial review proceedings in accordance with section 24-4-106 (3) for the following: [...].

6.11 Recommended Language for Criminal Background Checks

On occasion a bill sponsor wants to impose a statutory requirement that a licensee must submit to a criminal background check with fingerprints in order to obtain a license from an executive branch agency. The language for a criminal background check must be written in a particular way or the federal bureau of investigation will not perform the background check. The recommended language to use for a criminal background check is available in the Fingerprint Background Checks - Full Explanation - Canned Language.

Chapter 7: Funding: Appropriations, Transfers, and Special Funds

7.1 Introduction

The drafter should carefully consider the funding implications of each bill: Does the bill cost money to implement? If so, where does the money come from? In many cases, it is necessary to appropriate money in the bill to implement its provisions. In some cases, it is necessary to establish a mechanism that provides a source of revenue to fund the bill, and in other, limited cases it may be desirable to create a cash fund to hold the revenue collected to fund the bill. This section addresses the drafting of appropriation sections and other provisions that establish cash funds.

7.2 Appropriations Generally

7.2.1 Constitutional Background - Meaning of "Appropriation"

Article V, section 33 of the Colorado Constitution states: "No moneys in the state treasury shall be disbursed therefrom by the treasurer except upon appropriations made by law, or otherwise authorized by law...." Accordingly, under the constitutional separation of powers doctrine, the General Assembly has plenary or absolute power over appropriations, subject only to constitutional limitations.[1] The plenary power of the General Assembly over appropriations is the power "'to set apart from the public revenue a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object and for no other.'"[2]

An "appropriation" is legal authority for an agency to expend a specified sum of money for a specified purpose,[3] and a state agency may only expend money from the state treasury for a particular purpose if the agency has a legislative appropriation for that purpose or if the

[1] *Colorado General Assembly v. Lamm*, 704 P.2d 1371, 1380 (Colo. 1985); *MacManus v. Love*, 179 Colo. 218, 499 P.2d 609 (1972).

[2] *Colorado General Assembly v. Lamm*, 700 P.2d 508, 520 (Colo. 1985) (quoting *People ex rel. Ammons v. Kenehan*, 55 Colo. 589, 598, 136 P. 1033, 1036 (1913)).

[3] In some instances, statute refers to the General Assembly "appropriating" money from one fund to another. This should be avoided, as this use of "appropriate" confuses the distinction between "appropriate" and "transfer."

expenditure is "otherwise authorized by law." Since most state government programs depend on the level of funding provided, the drafter must understand appropriations in order to adequately address the possible funding implications of each bill.

7.2.2 Long Bill and Supplemental Appropriation Bills

Most appropriations for state departments, agencies, and institutions are included in the annual general appropriations bill, commonly known as the "long bill," which the joint budget committee staff drafts and the joint budget committee sponsors. Under article V, section 32 of the Colorado Constitution, the long bill may only contain appropriations. Thus, the long bill may not include any substantive law and is not included in the Colorado Revised Statutes. The long bill adopted each legislative session applies primarily to the upcoming fiscal year beginning July 1. During the next legislative session, the joint budget committee usually sponsors various "supplemental appropriation bills" to amend the long bill for that fiscal year. A "supplemental appropriation" provides funds for operations only during the fiscal year in which it is enacted. In addition, other members of the General Assembly may sponsor special appropriation bills that contain only appropriations.

7.2.3 Appropriation Sections in Substantive Bills

Often a bill that amends the statutes also includes an appropriation section to ensure that money is made available to cover the costs of implementing the bill. It is standard practice to include an appropriation section in a bill that creates a new state agency or adds new functions to an existing state agency. In most cases the joint budget committee staff will draft an appropriation section to be added as an amendment to the bill in the appropriations committee, but the drafter may include an appropriation section in the bill as introduced if requested by the sponsor or if the drafter determines that it is appropriate to do so.

7.2.4 Additional Constitutional Considerations

The drafter should become familiar with two constitutional provisions that specifically address appropriations. Article V, section 32 of the Colorado Constitution imposes the single-subject rule on all appropriations bills other than the long bill, and article V, section 34 of the Colorado Constitution prohibits appropriations to private or religious groups. While the General Assembly cannot directly appropriate money to private groups or individuals, the General Assembly may appropriate money to state agencies that purchase services from, or make grants and loans to, private groups or individuals. If the drafter believes that any of these constitutional provisions call the validity of an appropriation into question, the drafter should consult a senior staff member of the Office.

7.2.5 Relevant Statutory Provisions

The drafter should be familiar with statutory provisions that relate to the appropriations process. The majority of these provisions can be found in articles 75 and 76 of title 24, C.R.S. For reference, some of the most important of these sections are:

Section	Subject
2-2-703	Funding must be provided in bills that result in a net increase in periods of imprisonment in state correctional facilities
24-77-106	The General Assembly in its plenary authority intends to make fundamental fiscal policy decisions and limit state cash fund revenue to ensure compliance with the Taxpayer's Bill of Rights (TABOR)
24-36-103	State agencies must transmit all fees and taxes collected to the treasury department
24-36-114	Interest earned on state money must be credited to the general fund, unless otherwise expressly provided by law
24-75-201	General fund created - all state revenue must be credited to the general fund unless otherwise provided by law
24-75-201.1	Restrictions on state general fund appropriations; required general fund reserve
24-75-402	Limits on uncommitted cash fund reserves; reductions in fees
24-76-101 to 24-76-102	Federal funds - appropriations and reporting. *But see Colorado General Assembly v. Lamm*, 738 P.2d 1156 (Colo. 1987).

7.3 Considerations in Drafting Appropriation Sections

7.3.1 Indicating Appropriations in Bill Titles

The title of a bill that contains an appropriation section that makes or reduces an appropriation should indicate that in the title's trailer. If an appropriation section is amended into the bill by the appropriations committee, the amendment will also need to amend the bill's title appropriately. If the drafter includes an appropriation section prior to introduction or by an amendment outside of the appropriations committee, the drafter should, depending on the type of appropriation section, add one of the following trailers at the end of the title:

- "..., AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION." - The drafter should use this phrase if the bill makes a new appropriation or increases an existing appropriation.
- "..., AND, IN CONNECTION THEREWITH, REDUCING AN APPROPRIATION." - The drafter should use this phrase if the bill reduces an existing appropriation.
- "..., AND, IN CONNECTION THEREWITH, MAKING AND REDUCING APPROPRIATIONS." - The drafter should use this phrase if the bill reduces an existing appropriation and makes a new appropriation or increases an existing appropriation. An example of this situation is a bill that reduces an appropriation to a department and then uses the resulting savings to pay for a new program created in the bill.

The drafter should always write the first two trailers shown above in the singular form. If the bill already has a trailer, the drafter can add the correct appropriation phrase at the end of the existing trailer.

Some appropriation sections do not make or reduce an appropriation. For example, the drafter may include an appropriation section to adjust the number of FTE or to identify federal funds that are noted for informational purposes only. In this instance, the drafter should not include an appropriation trailer in the bill title.

7.3.2 Required Elements

Every appropriation must contain at least the following five elements, which are discussed in detail in 7.3.4 to 7.3.8:

1. **When** the money appropriated is available for expenditure;
2. **From where** the money is appropriated - a cash fund or the general fund (for example, "from the license plate cash fund created in section 42-3-301 (1)(b), C.R.S.," or "from the general fund");
3. **To whom** the appropriation is made;
4. The **amount** of the appropriation; and
5. The **purpose** for which the appropriation is made.

7.3.3 Basic Format

There is a basic, three-sentence format that applies for most appropriation sections.

> **SECTION #. Appropriation.** For the 20[##]-[##] state fiscal year, $__ is appropriated to the department of __ for use by the __. This appropriation is from the general fund and is based on an assumption that the __ will require an additional __ FTE. To implement this act, the __ may use this appropriation for __.

The first sentence describes the fiscal year, the amount of the appropriation, and the department to which the appropriation is made. The amount of an appropriation is expressed with figures only, for example, "$1,250,000." Note, this is an exception to the general rule that dollar amounts should be designated with words only and not numbers. If the drafter needs to identify a specific division or other departmental unit to use the appropriation, then the drafter should identify the division after the department with the phrase "for use by the division/departmental unit of __." The result is that, with cursory review, a reader will know the essential information about the appropriation.

The second sentence identifies the source of the appropriation. If the source is a cash fund, the second sentence identifies the statutory citation for the fund and attributes the citation to "C.R.S." Note, this is an exception to the general rule to spell out "Colorado Revised Statutes" in nonstatutory materials. It is unnecessary to have a citation for the general fund.

Also, rather than "appropriating" an FTE, the second sentence describes the associated FTE consistent with the definition of "FTE" that applies to the long bill, which complies with Colorado case law.[4] The second sentence should attribute the FTE to the division or other departmental unit if a division or department is identified in the first sentence.

The third sentence specifically identifies how the department is permitted to use the appropriation. Again, if the first sentence identifies a division or departmental unit, the division or departmental unit should be the actor in the third sentence. In many instances, this last sentence will include additional details about a program or a subdivision within the long bill so that the specified use corresponds to a long bill appropriation. The drafter has some flexibility in the phrasing used to add this additional information, but the content will likely begin with "for," "to," or "related to."

[4] *Anderson v. Lamm*, 579 P.2d 620, 626 (Colo. 1978) (Holding that “attempting to allocate the number of full-time employees to be hired in certain job categories” is “clearly in violation of the separation of powers doctrine.”)

7.3.4 Designating Time Period for Appropriations

7.3.4.1 General Provisions

If an appropriation does not designate a time period for the availability of an appropriation, it is presumed that the money appropriated is intended to be available for the fiscal year beginning on July 1 of the following year. But the better practice is to include the phrase "For the [insert appropriate fiscal year number in the format of 20[##]-[##] state fiscal year,". Example:

> **SECTION #. Appropriation.** For the 20[##]-[##] state fiscal year, $__ is appropriated to the department of __. This appropriation is from the general fund. To implement this act, the department may use this appropriation for __.

Occasionally, it is necessary to fund operations immediately upon passage of an act, i.e., during the current fiscal year, and to have the appropriation roll forward to the next fiscal year as well. In such instances, the drafter should use an appropriation section in the format of the following example:

> **SECTION #. Appropriation.** For the 2018-19 state fiscal year, $__ is appropriated to the department of __. This appropriation is from the __ fund created in section __, C.R.S., and is based on the assumption that the department will require an additional __ FTE. To implement this act, the department may use this appropriation for __. Any money appropriated in this section not expended prior to July 1, 2019, is further appropriated to the department for the 2019-20 state fiscal year for the same purpose.

7.3.4.2 Reversion of Unexpended Appropriations

Pursuant to section 24-75-102, C.R.S., at the end of the fiscal year for which an appropriation is made, the unexpended amount of every appropriation reverts to the fund from which the appropriation was made, unless otherwise provided by law, such as in the statute governing the fund from which the appropriation was made.

In addition, a bill may transfer money appropriated from the general fund, which money would otherwise revert to the general fund, to another fund on either a one-time basis or a permanent basis. For a discussion of this type of transfer, *see* section 7.4 of this chapter.

7.3.4.3 Special Rule for Certain Corrections Bills

Section 2-2-703, C.R.S., requires a bill passed after July 1, 2025, that results in a net increase in periods of imprisonment in state correctional facilities to include an appropriation "sufficient to cover any increased capital construction costs and any increased operating costs which are the result of such bill in each of the first five years in which there is a fiscal impact as a result of the

bill." The language needed to accomplish this sort of appropriation varies with the timing and nature of the fiscal impact of different bills, but the drafter should generally include the appropriation in the substantive text of such a bill rather than in a separate appropriation section.

The total amount of the increased capital construction costs are often unknown at the time the bill is introduced. In those cases, the drafter should include the following placeholder provision, which will be amended out in the appropriations committee:

> **SECTION #. Potential appropriation.** Pursuant to section 2-2-703, C.R.S., any bill that results in a net increase in periods of imprisonment in the state correctional facilities must include an appropriation of money that is sufficient to cover any increased capital construction, any operational costs, and increased parole costs that are the result of the bill for the department of corrections in each of the first five years following the effective date of the bill. Because this act may increase periods of imprisonment, this act may require a five-year appropriation.

Because the placeholder section does not actually include an appropriation, it is not necessary for the drafter to include the appropriation trailer in the bill title of the introduced bill. The drafter or joint budget committee staff should add the trailer with the amendment in the appropriations committee, assuming that the bill receives an appropriation.

In the appropriations committee, the joint budget committee staff should prepare an amendment to replace the placeholder provision with the required statutory change. The following is an example of the suggested language format:

> **17-18-127. Appropriation to comply with section 2-2-703 - HB 19-1212 - repeal.** (1) Pursuant to section 2-2-703, the following statutory appropriations are made in order to implement House Bill 19-1212, enacted in 2019:
>
> (a) For the 2019-20 state fiscal year, one hundred thousand dollars is appropriated from the capital construction fund created in section 24-75-302 to the corrections expansion reserve fund created in section 17-1-116.
>
> (b) (I) For the 2020-21 state fiscal year, one hundred thousand dollars is appropriated from the capital construction fund created in section 24-75-302 to the corrections expansion reserve fund created in section 17-1-116.
>
> (II) For the 2020-21 state fiscal year, fifty thousand dollars is appropriated to the department from the general fund.
>
> (c) (I) For the 2021-22 state fiscal year, fifty thousand dollars is appropriated from the capital construction fund created in section 24-75-302 to the corrections expansion reserve fund created in section 17-1-116.

(II) For the 2021-22 state fiscal year, twenty-five thousand dollars is appropriated to the department from the general fund.

(d) (I) For the 2022-23 state fiscal year, twenty-five thousand dollars is appropriated from the capital construction fund created in section 24-75-302 to the corrections expansion reserve fund created in section 17-1-116.

(II) For the 2022-23 state fiscal year, eighteen thousand dollars is appropriated to the department from the general fund.

(e) (I) For the 2023-24 state fiscal year, eighteen thousand dollars is appropriated from the capital construction fund created in section 24-75-302 to the corrections expansion reserve fund created in section 17-1-116.

(II) For the 2023-24 state fiscal year, eleven thousand dollars is appropriated to the department from the general fund.

(2) This section is repealed, effective July 1, 2024.

The amendment should also amend section 24-75-302 (2), C.R.S., to make the necessary increase to the statutory transfer of money from the general fund to the capital construction fund so sufficient money exists in the capital construction fund to fund the appropriation to the corrections expansion reserve fund. The following is an example of the language to include in the bill:

SECTION #. In Colorado Revised Statutes, 24-75-302, **add** (2)(gg), (2)(hh), (2)(ii), (2)(jj), and (2)(kk) as follows:

24-75-302. Capital construction fund - capital assessment fees - calculation - information technology capital account - repeal. (2) The controller shall transfer a sum as specified in this subsection (2) from the general fund to the capital construction fund as moneys become available in the general fund during the fiscal year beginning on July 1 of the fiscal year in which the transfer is made. Transfers between funds pursuant to this subsection (2) are not appropriations subject to the limitations of section 24-75-201.1. The amounts transferred pursuant to this subsection (2) are as follows:

(gg) FOR THE 2019-20 FISCAL YEAR, ONE HUNDRED TWENTY-FIVE THOUSAND ONE HUNDRED SIXTY-FIVE DOLLARS PURSUANT TO H.B. 19-1212, ENACTED IN 2019;

(hh) FOR THE 2020-21 FISCAL YEAR, ONE HUNDRED TWENTY-FIVE THOUSAND ONE HUNDRED SIXTY-FIVE DOLLARS PURSUANT TO H.B. 19-1212, ENACTED IN 2019;

(ii) For the 2021-22 fiscal year, one hundred twenty-five thousand one hundred sixty-five dollars pursuant to H.B. 19-1212, enacted in 2019;

(jj) For the 2022-23 fiscal year, one hundred twenty-five thousand one hundred sixty-five dollars pursuant to H.B. 19-1212, enacted in 2019;

(kk) For the 2023-24 fiscal year, one hundred twenty-five thousand one hundred sixty-five dollars pursuant to H.B. 19-1212, enacted in 2019.

Over time, the General Assembly has developed a *de minimis* exception to the statutory appropriation requirement. In that circumstance, the drafter should use the following section:

SECTION #. Exception to the requirements of section 2-2-703, C.R.S. The general assembly hereby finds that the amendments to section __, enacted in section __ of this act will result in the minor fiscal impact of one additional offender being convicted and sentenced to the department of corrections during the five years following the effective date of this act. Because of the relative insignificance of this degree of fiscal impact, these amendments are an exception to the five-year appropriation requirements specified in section 2-2-703.

Finally, the drafter should note that, notwithstanding the requirements of section 2-2-703, C.R.S., because section 2-4-215, C.R.S., prevents one General Assembly from binding future General Assemblies, a General Assembly may refuse to make appropriations required by statute by simply amending or repealing the relevant statutory provisions.

7.3.4 Special Rule for Capital Construction Bill Appropriations

In accordance with section 24-75-303 (5), C.R.S., which codified the practice typically used by the joint budget committee for capital construction appropriations in the long bill, the drafter, subject to exceptions specified in the statute, should indicate in the appropriation section of a substantive-law bill that makes an appropriation for a capital construction budget item, or an information technology capital project, that the appropriation made will be available for three years or until completion of the project, whichever comes first, by including the following language:

SECTION #. Appropriation. (1) For the 20[##]-[##] state fiscal year, $__ is appropriated to the department of __. This appropriation is from the capital construction fund created in section 24-75-302, C.R.S. To implement this act, this appropriation is for [insert description of project].

(2) The appropriation made in subsection (1) of this section is available upon passage of this act, and, if any appropriated project is initiated within the

fiscal year, the appropriations for the project remain available until completion of the project or for a period of three years, whichever comes first, at which time such unexpended and unencumbered balances revert to the capital construction fund.

7.3.5 Designating the Source of Funding

7.3.5.1 General Provisions

Bills may be funded from the general fund or from cash funds. For a discussion of the funding of bills through cash funds, *see* section 7.5 of this chapter.

Section 24-75-201.1 (1)(a)(II.5), C.R.S., imposes a limitation on total annual general fund appropriations. As a general rule, general fund appropriations cannot exceed "such moneys as are necessary for reappraisals of any class or classes of taxable property for property tax purposes as required by section 39-1-105.5, C.R.S., plus an amount equal to five percent of Colorado personal income." *Id.*

7.3.5.2 Bills Making Long Bill Adjustments

Bills sometimes include "long bill adjustments" in their appropriation sections. Typically, these bills cost money to implement but also save money in other governmental programs. A bill of this kind will include an appropriation for the costs of implementing the bill and a provision that describes reductions in specified line-item appropriations for ongoing programs in the long bill for the upcoming fiscal year. The drafter should generally use this type of appropriation section only if part of the appropriation decreases a line item in the long bill. Before using this type of appropriation section, the drafter should contact joint budget committee staff to discuss adding the clause.

In drafting a long bill adjustment, the drafter must precisely identify the line items to be adjusted and the amount of each adjustment. If the long bill is already introduced, the drafter should look at the line items in the bill to be adjusted and use the same wording used in the long bill. If the long bill is not yet introduced, the drafter should look at the language from the previous long bill, assuming that the wording of the line items will be similar in both long bills. Example:

> **SECTION #. Appropriation - adjustments to 2019 long bill.** (1) To implement this act, appropriations made in the annual general appropriation act for the 2019-20 state fiscal year to the department of public health and environment for use by the water quality division are adjusted as follows:
>
> (a) The general fund appropriation for administration is decreased by $8,955, and the related FTE is decreased by 0.3 FTE;

(b) The cash funds appropriation from the water quality improvement fund created in section 25-8-608 (1.5), C.R.S., for water quality improvement is decreased by $35,722; and

(c) The appropriation for personal services in the drinking water program is increased by $44,727, which consists of $34,700 from the general fund and $10,027 from the drinking water cash fund created in section 25-1.5-209 (2), C.R.S., and which total amount is based on an assumption that the division will require an additional 1.2 FTE.

7.3.5.3 Bills Funded from General Fund Savings in Other Bills

In certain circumstances, the General Assembly will link the funding of one bill to savings that will occur by the passage of a second bill. In this situation, there is no adjustment of the long bill as generally occurs when the funding and savings are included in the same bill; the two bills are generally unrelated to each other. The drafter should include language in the appropriation section to note the legislative intent concerning the funding source and should include a separate effective date clause as shown in the example. If a member requests that the savings in a certain bill be used as a funding source, the drafter should remind the member that the member's bill may be competing with several other bills for the use of the savings. Note, in the following example, subsection (1) uses standard appropriation section language.

SECTION #. Appropriation - legislative intent. (1) For the 20[##]-[##] state fiscal year, $__ is appropriated to the department of __ for use by the [division or other departmental unit]. This appropriation is from the general fund and is based on an assumption that the [division or other departmental unit] will require an additional __ FTE. To implement this act, the [division or other departmental unit] may use this appropriation for __.

(2) The appropriation made in subsection (1) of this section derives from savings generated from the implementation of [House/Senate] Bill [##]-__, enacted in 20[##].

SECTION #. Effective date. (1) Except as specified in subsection (2) of this section, this act takes effect __, 20[##].

(2) This act takes effect only if:

(a) The net reduction in the appropriation from the general fund made in [House/Senate] Bill [##]-__ is equal to or greater than the amount of the general fund appropriation made in subsection 1 of section __ of this act;

(b) [House/Senate] Bill[##]-__ is enacted and becomes law; and

(c) The staff director of the joint budget committee files written notice with the revisor of statutes no later than July 1, 20[##], that the requirement set forth in subsection (2)(a) of this section has been met.

These clauses have been carefully developed with coordination and input from the joint budget committee and the revisor of statutes; however, the drafter is advised to communicate with joint budget committee staff when incorporating these provisions into a bill. A drafter who substantially deviates from the recommended language should consult with senior staff in the Office before creating a new type of clause or contingency.

7.3.5.4 Federal Funds

Under a line of Colorado Supreme Court cases interpreting the Colorado Constitution, the General Assembly generally lacks the power to appropriate federal funds.[5] Thus, the drafter should not draft appropriation sections that appropriate federal funds. However, the General Assembly may want to indicate in a bill how much federal funding the state will receive to implement the bill by adding one of the following sections to the bill.

If a bill is to be funded entirely with federal funds and the bill sponsor wants to indicate the amount of federal funding in the bill, the drafter should include the following section in the bill:

SECTION #. Federal funds. For the 20[##]-[##] state fiscal year, the general assembly anticipates that the department of __ will receive $__ in federal funds to implement this act. This figure is subject to the "(I)" notation as defined in the annual general appropriation act for the same fiscal year.

If a bill is to be funded by a combination of state and federal funding and the bill sponsor wants to indicate the amount of federal funding in the bill, the drafter should include an appropriation section similar to the following example in the bill:

SECTION #. Appropriation. (1) For the 20[##]-[##] state fiscal year, $__ is appropriated to the department of human services for use by the [division or other departmental unit]. This appropriation is from the general fund and is subject to the "(M)" notation as defined in the general appropriation act for the same fiscal year. To implement this act, the [division or other departmental unit] may use this appropriation for __.

(2) For the 20[##]-[##] state fiscal year, the general assembly anticipates that the department of __ will receive $__ in federal funds for __. The appropriation in subsection (1) of this section is based on the assumption that the

[5] *See Colorado General Assembly v. Lamm*, 738 P.2d 1156 (Colo. 1987) and *MacManus v. Love*, 499 P.2d 609, 610 (Colo. 1972) ("[F]ederal contributions are not the subject of the appropriative power of the legislature.").

department will receive this amount of federal funds, which is included for informational purposes only.

7.3.6 Designating the Recipient of an Appropriation

7.3.6.1 General Provisions

Bills generally make appropriations for functions of the executive branch of government to a principal department or to the office of the governor. A specific unit within that department or office may be designated as follows: "$__ is appropriated to the department for use by [division or other departmental unit]." The drafter must always be sure to use the correct name of the governmental unit involved, i.e., the name as it is stated in the "Administrative Organization Act of 1968," article 1 of title 24, C.R.S.

7.3.6.2 Appropriations to Cash Funds

Occasionally, a bill makes an appropriation from the general fund to a specific cash fund. This can be done either with or without associated spending authority. Example without associated spending authority:

> **SECTION #. Appropriation.** For the 20[##]-[##] state fiscal year, $__ is appropriated to the __ fund created in section __, C.R.S. This appropriation is from the general fund. The department of __is responsible for the accounting related to this appropriation.

Example with associated spending authority:

> **SECTION #. Appropriation.** (1) For the 2019-20 state fiscal year, $1,000,000 is appropriated to the lead school grant program fund created in section 22-36-107 (1), C.R.S. This appropriation is from the general fund. The department of education is responsible for the accounting related to this appropriation.
>
> (2) For the 2019-20 state fiscal year, $1,000,000 is appropriated to the department of education. This appropriation is from reappropriated funds in the lead school grant program fund under subsection (1) of this section. To implement this act, the department may use the appropriation as follows:
>
> (a) $200,000 for costs incurred in administering the program, which amount is based on an assumption that the department will require an additional 2.0 FTE;

(b) $600,000 for grants to school districts with enrollments of 250,000 or more; and

(c) $200,000 for grants to school districts with enrollments less than 250,000.

7.3.7 Designating the Amount of the Appropriation

The amount of an appropriation represents the maximum amount of money that the recipient of the appropriation may spend. For this reason, outside of the legislative process an appropriation is sometimes called "spending authority." "Appropriation" and "spending authority" generally have the same meaning; however, when the appropriation comes from a cash fund that depends on revenue collection, the cash fund spending authority cannot exceed the amount of revenue collected and must equal the amount of revenue collected or the amount appropriated, whichever is less. The same principle applies if the appropriation is from reappropriated funds, for example, cash funds appropriated to one state agency that are spent to pay another agency for services provided: "Spending authority" is limited to the actual money paid to and received by a state agency or the amount of the appropriation, whichever is less. (See section 7.5.4 of this chapter for information about reappropriated funds.)

The drafter should express the amount of an appropriation with figures only, for example, "$1,250,000." This is an exception to the general drafting principle that dollar amounts should be designated with words only and not numbers.

7.3.8 Designating the Purpose of the Appropriation

The purpose of an appropriation can be very broad or quite specific, depending on the bill sponsor's intent. The purpose of an appropriation may be simply stated as "to implement this act." However, in most cases, the purpose will need to be more specific. The drafter can accomplish this by using the language "to implement section 3 of this act" or by identifying the specific purpose, such as "to implement the lead school program."

The joint budget committee staff also commonly use appropriation sections that specify multiple purposes. Example of a multiple-purpose appropriation from the general fund:

SECTION #. Appropriation. (1) For the 2015-16 state fiscal year, $1,401,000 is appropriated to the department of education for use by the assessments and data analysis unit. This appropriation is from the general fund. To implement this act, the unit may use this appropriation as follows:

(a) $100,000 for personal services, which amount is based on an assumption that the unit will require an additional 3.5 FTE;

(b) $301,000 for distribution to the districts pursuant to section 22-24-104 (4)(a), C.R.S.; and

(c) $1,000,000 for increased costs in evaluating, testing, and reporting pursuant to section 22-24-105, C.R.S.

If more than one division or other departmental unit will receive the appropriation, the drafter should reference only the department in the first sentence, then identify the particular departmental units within that department in the succeeding paragraphs. Example:

SECTION #. Appropriation. (1) For the 2019-20 state fiscal year, $670,000 is appropriated to the department of labor and employment. This appropriation is from the employment support fund created in section 8-77-109 (1)(a)(I), C.R.S. To implement this act, the department may use this appropriation as follows:

(a) $400,000 for use by the executive director's office for personal services, which amount is based on an assumption that the office will require an additional 2.7 FTE;

(b) $166,000 for use by the division of unemployment insurance for employment and training technology initiatives; and

(c) $204,000 for use by the division of unemployment insurance for program costs.

See Appendix E.4 of this manual for common examples of appropriations to multiple departments.

The joint budget committee staff will frequently match the language of the appropriation section to a line item in the long bill. Example of appropriation from a cash fund:

SECTION #. Appropriation. For the 2019-20 state fiscal year, $35,000 is appropriated to the department of public health and environment for use by the hazardous materials and waste management division. This appropriation is from the hazardous waste service fund created in section 25-15-304, C.R.S., and is based on an assumption that the division will require an additional 0.3 FTE. To implement this act, the division may use this appropriation for personal services related to the hazardous waste control program.

The drafter may also use the format used in the following example to appropriate money for a purpose identified in the long bill.

Section #. Appropriation. For the 2019-20 state fiscal year, $1,272,133 is appropriated to the judicial department. This appropriation is from the general

fund and is based on an assumption that the department will require an additional 14.2 FTE. To implement this act, the department may use this appropriation as follows:

Trial courts	
Trial court programs	$700,394 (8.8 FTE)
Probation and related services	
Probation Programs	$152,261 (2.3 FT)
Centrally-administered programs	
Courthouse capital and infrastructure maintenance	$231,126
Office of the state public defender	
Personal services	$184,970 (3.1 FT)
Operating expenses	$2,945
Attorney registration	$437

The drafter should use this clause only if it is difficult for the drafter to match a line item in a paragraph format or if an appropriation is made for numerous line items.

7.3.9 Drafting "No Appropriation" and "No FT" Sections

The appropriations committees sometimes add a "no appropriation" section to bills that do not require an appropriation. A "no appropriation" section expresses a legislative finding that a bill will not require additional funding. A "no appropriation" section may assist the bill sponsor by improving the bill's chances of passage, but its primary purpose is to discourage the implementing agency from making a budget request in future years for the costs of implementing the bill. Example:

> **SECTION #. No appropriation.** The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state money is necessary to carry out the purposes of this act.

In some cases, the General Assembly may want to indicate that the department is to implement the bill with existing FTEs, but inclusion of this clause does not actually limit the department's ability to use the appropriation to increase its number of FTEs. Example:

> **SECTION #. Appropriation.** (1) For the 20[##]-[##] state fiscal year, $__, is appropriated to the department of __. This appropriation is from the __ fund created in section __, C.R.S. To implement this act, the department may use this appropriation to __.

(2) It is the intent of the general assembly that this act can be implemented within existing FT allocations and that no separate appropriations of state money for FTEs will be necessary to carry out the provisions of this act.

7.3.10 Drafting "Future Appropriation" Sections

Sometimes a bill is not expected to require funding for implementation during the first fiscal year but will require funding in subsequent fiscal years. In these situations, an appropriations committee may add a "future appropriations" section to warn the General Assembly of the estimated future costs of the bill. However, a "future appropriations" section is not actually an appropriation of state money, nor does it obligate the General Assembly to appropriate any particular amount of money in future fiscal years.

SECTION #. Future appropriations. Although no appropriation is included in this act for the 20[##]-[##] state fiscal year, it appears that this act will require appropriations from __ for subsequent fiscal years, and the amount required to be appropriated for the fiscal year beginning with the 20[##]-[##] state fiscal year is estimated to be $__.

This type of appropriation section is not favored or commonly used. As such, it is not included in the appropriation macro available to the drafter in WordPerfect.

7.3.11 Double Appropriations

If identical, duplicate bills are introduced and subsequently enacted that contain duplicate appropriations for the same purpose, the joint budget committee staff will interpret that as two separate appropriations, thereby appropriating twice the amount needed for the program. In that circumstance, the drafter needs to advise the bill sponsors of the conflict and work with them to see if one of the bills can be killed to avoid incurring a "double" appropriation for the same purpose.

7.4 Transfers of Funds or Appropriations

The term "transfer" has different meanings in different situations. "Transfer" may mean moving money from one fund to another fund, or it may mean moving money from one item of appropriation to another item of appropriation.

Transfers of money from one cash fund to another cash fund generally occur when a cash fund has a large balance or reserve. The General Assembly passed legislation in 1998 to reduce cash-fund balances so that transfers between cash funds would not occur too often in the future. *See* section 24-75-402, C.R.S., which establishes limits on uncommitted cash fund

reserves. This type of transfer only provides money for one year and is not an ongoing source of funding unless the transfer occurs on a yearly basis. However, if a member requests this type of transfer, there are two approaches that the drafter can take. The first approach, which is the preferred approach, is for the drafter to amend the statutory section creating the cash fund to provide for the transfer followed by the appropriation of the transferred money. Example:

> **SECTION #.** In Colorado Revised Statutes, 24-21-104, **add** (3)(d)(XVI) as follows:
>
> **24-21-104. Fees of secretary of state.** (3) (d) (XVI) NOTWITHSTANDING ANY PROVISION OF SUBSECTION (3)(B) OF THIS SECTION TO THE CONTRARY, ON JULY 1, 2015, THE STATE TREASURER SHALL TRANSFER ONE MILLION DOLLARS FROM THE DEPARTMENT OF STATE CASH FUND TO THE SCHOOL CONSTRUCTION AND RENOVATION FUND CREATED IN SECTION 22-43.7-103.
>
> **SECTION #. Appropriation.** For the 2015-16 state fiscal year, $1,000,000 is appropriated to the department of education. This appropriation is from the school construction and renovation fund created in section 22-43.7-103, C.R.S. To implement this act, the department may use this appropriation for the school district capital construction assistance program established by article 43.7 of title 22, C.R.S.

The second approach is for the drafter to make the transfer and the appropriation in the same nonstatutory section. In either case, the drafter needs to include language clearly stating that the transfer of the money is being made, notwithstanding statutory provisions that may place limits on how the money in the cash fund is to be expended.

7.4.2 Transfers Between Two Line-Item Appropriations

A transfer between two line-item appropriations is essentially two appropriations: A negative supplemental appropriation to one line item (i.e., a reduction in the line-item appropriation) combined with a matching positive supplemental appropriation to another line item (i.e., a positive supplemental appropriation to another line item equal to the reduction in the first line-item appropriation). Example:

> **SECTION #. Capital construction appropriation - adjustments to 2019 long bill.** (1) To implement this act, the general fund appropriation made in the annual general appropriation act for the 2019-20 state fiscal year to the controlled maintenance trust fund created in section 24-75-302.5 (2)(a), C.R.S. is decreased by $17,000:
>
> (2) For the 2019-20 state fiscal year, $17,000 is appropriated to the department of revenue for use by the division of motor vehicles. This

appropriation is from the general fund. To implement this act, the division may use this appropriation for operating expenses for driver services.

7.5 Cash Funds

7.5.1 General Provisions

By law, all revenue and money received by the state must be transmitted to the state treasurer and credited to the general fund unless the money is required by the constitution or statute to be credited and paid to a cash fund. *See* sections 24-36-103 and 24-75-201, C.R.S.

A "cash-funded" program supports itself through fees or charges. Usually, but not always, a bill creates a cash fund to separately account for the fees or charges collected. For example, the occupational licensing functions of the state are currently cash-funded through license fees and charges assessed against licensees. No tax revenue is required since the licensees themselves pay the costs of their licensing. The state treasurer credits fees collected from licensees to a cash fund, the division of professions and occupations cash fund, and the General Assembly makes annual appropriations from that cash fund to defray the costs of the state's licensing activities. *See* section 12-20-105, C.R.S.

In 1998, the General Assembly addressed concerns that cash-fund reserves were too high by passing S.B. 98-194, the most significant portion of which is now codified as section 24-75-402, C.R.S. Subject to other constitutional and statutory provisions and with numerous specified exceptions, including exceptions for cash funds with uncommitted reserves of less than $200,000; cash funds established to fund capital construction; and cash funds receiving revenue solely from fees set by the federal government, the Colorado Supreme Court, a TABOR enterprise, or a special-purpose authority, section 24-75-402, C.R.S., limits the amount of uncommitted reserves that a cash fund that is established to fund a specific program and that includes fee revenue may contain at the end of any fiscal year to 16.5% of the amount expended from the cash fund during that fiscal year. Section 24-75-402, C.R.S., also requires an entity that collects fees that are credited to a cash fund to adjust the fees, which do not include charges and assessments established by law that the entity cannot change or TABOR-exempt charges, as necessary to ensure that the amount of uncommitted reserves in the cash fund remains at or below the 16.5% limit. Any cash funds that are depositories for fees the amount of which is set by the General Assembly in statute are not subject to the requirements of section 24-75-202, C.R.S.

If a bill sponsor asks the drafter to draft a bill or amendment that allows an entity to reduce the amount of a fee that is set in statute, and therefore not ordinarily subject to administrative reduction, so that the entity can reduce the uncommitted reserves of the cash fund to which the fee is credited, the drafter should use the following language:

(#) Notwithstanding the amount specified for the fee in subsection __ of this section, the [name of collecting entity] by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3) to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the [name of collecting entity] by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4).

To exempt a cash fund from the maximum reserve requirement, the drafter should add a new paragraph to section 24-75-402 (5), C.R.S.; *see* section 7.5.3.10 of this chapter.

7.5.2 Terminology

Terms relating to funding are not always used consistently in the statutes. The following usages are suggested:

Revenue, such as fees, tax receipts, and charges, is first collected by some agency, then transmitted to the state treasurer, who credits the revenue to a specified fund, or to a special account in a specified fund. The treasurer may deposit the money in a bank or other financial institution where it will earn interest for the state.

A **fund** is an accounting device that sets apart and administers a collection of money, and each fund consists of one or more self-balancing accounts. To avoid confusion, the drafter should use the term "funds" only as the plural of "fund" and avoid using "funds" as a synonym for "money." A new fund should be created "in the state treasury" rather than "in the office of the state treasurer."

A **revolving fund** is a fund that is replenished continuously or periodically, often from some source other than tax revenue. The term usually refers to a fund that is used to defray the operating expenses of a state-conducted enterprise and replenished from the sale of the enterprise's goods or services. *See*, e.g., section 33-1-114, C.R.S., (the Colorado outdoors magazine revolving fund, used for publishing the magazine and replenished from paid subscriptions) and section 24-30-1108, C.R.S. (the department of personnel revolving fund).

A **sinking fund** is a fund established to extinguish a government debt, e.g., a fund used to accumulate the money necessary to pay principal and interest on bonds issued to finance an infrastructure project.

7.5.3 Drafting Considerations When Creating Cash Funds

7.5.3.1 Required Elements

Every statute that creates a cash fund should specify:

- The source of revenue for the fund;
- How money in the fund is to be appropriated; as discussed below, the fund should be either "continuously appropriated" or subject to annual appropriation; and
- For what purpose money may be expended from the fund.

7.5.3.2 Source of Revenue - Amount Fixed by Agency

In some cases, a statute itself will establish the amount of any taxes, fees, or charges imposed to generate revenue for a cash fund. In other cases, a statute will give an agency authority to set the amount of fees or charges, but not taxes, because the General Assembly may not delegate the authority to levy taxes to an agency. When authorizing an agency to fix the amount of a fee or charge, the drafter should include language that requires the agency to act by rule. Example:

> **#-#-###. Fees - taxicab fund.** The commission by rule shall establish fees for the direct and indirect costs of the administration of this article ##, which fees shall be assessed annually against any person licensed pursuant to the provisions of section #-#-###. The commission shall transmit all fees collected to the state treasurer, who shall credit the same to the taxicab fund, which fund is hereby created. The money in the fund is subject to annual appropriation by the general assembly for the direct and indirect costs of the administration of this article ##.

A statute may also require an agency to annually adjust its fees based on the amount of any appropriation made to the agency. Example:

> **24-21-104. Fees of secretary of state.** (3)(c) Beginning July 1, 1984, and each July 1 thereafter, whenever moneys appropriated to the department of state during the prior fiscal year are unexpended, said moneys shall be made a part of the appropriation to the department of state for the next fiscal year, and such amount shall not be raised from fees collected by the department of state. If a supplemental appropriation is made to the department of state for its activities, the fees of the department of state shall be adjusted by an additional amount that is sufficient to compensate for such supplemental appropriation. Funds appropriated to the department of state in the general appropriation bill from the department of state cash fund shall be designated as cash funds and shall not

> exceed the amount anticipated to be raised from fees collected by the department of state.

7.5.3.3 Startup Financing

When a new cash-funded program begins operation, usually on July 1, it will often incur expenses before any of the fees, taxes, or charges that support the program can be collected. Thus, a bill sponsor may ask the drafter to provide for a loan of money, usually from the general fund, to enable the program to defray its expenses until sufficient fee, charge, or tax income accrues to the cash fund. However, such provisions are usually not necessary since section 24-75-203, C.R.S., allows programs to obtain advances of money for working capital. Thus, the drafter should not include startup financing provisions unless special circumstances require the drafter to do so.

7.5.3.4 Annual Appropriation or Continuous Appropriation by Statute

Most cash funds are subject to annual appropriation, which means that an agency can only expend the amount of money from the fund that the General Assembly annually appropriates to the agency. The drafter should use the following language to indicate an annual appropriation:

> Subject to annual appropriation by the general assembly, the [name of entity] may expend money from the fund for [specified purpose(s)].

In contrast, an agency may expend money in a "continuously appropriated" fund without annual appropriation. The drafter should use the following language to indicate a continuous appropriation:

> Money in the fund is continuously appropriated to the [name of entity] for [specified purpose(s)].

The drafter should be aware, and advise any bill sponsor who desires "continuous appropriations," that in recent years the appropriations committees have generally amended bills with continuously appropriated cash funds so that the funds will be subject to annual legislative appropriation. The primary purpose of subjecting cash funds to annual appropriation is to ensure that the funding of state government programs is fully accounted for through the budget process by minimizing the number of programs that are operated "off-budget" and subjected to less public scrutiny.

7.5.3.5 Allowing Agencies to Retain Administrative Costs

Sometimes a state agency collects money on behalf of another agency or political subdivision, and a bill sponsor wishes to pay the costs incurred by the collecting agency out of the money the agency collects. In those cases, a bill may provide that the collecting agency is entitled to retain

its administrative costs before paying over the proceeds or that the collecting agency is entitled to be paid its administrative costs by the recipient. In either case, the drafter must specify whether the money to be retained or received by the collecting agency is subject to annual appropriation or continuously appropriated.

In drafting a bill that allows an agency to retain administrative collection costs, the drafter should clearly describe how the retained money will be treated by including language stating that any money withheld for administrative expenses is to be credited to the general fund or to a cash fund and that the money is subject to appropriation by the General Assembly for the administrative collection costs. For examples of retained costs that are credited to the general fund and subject to appropriation by the General Assembly, *see* sections 32-9-119 (2)(c)(II) and 30-11-107.5 (2)(b), C.R.S.

7.5.3.6 Direct and Indirect Costs

The joint budget committee, through the joint budget committee staff, recommends using language that allows the General Assembly flexibility in appropriating not only for the direct costs of an agency in administering a program but also for the indirect costs incurred by other state agencies because of the program, such as the costs of services provided by the controller, the department of personnel, and the department of the treasury. For examples of this language, *see* the preceding examples in this section 7.5.3 of this chapter. However, the drafter should remember that the drafting of bills and amendments is ultimately within the control of the legislative sponsor of each bill or amendment, respectively.

7.5.3.7 Crediting Investment Earnings to the Fund

The state treasurer generally invests money credited to a cash fund until needed for expenditure and, unless otherwise provided by statute, credits the interest earned from such investments to the general fund in accordance with section 24-36-114, C.R.S. The following language provides for the crediting of such interest income to the general fund. The drafter should use this language unless the bill sponsor requests that interest be credited to the cash fund:

> In accordance with section 24-36-114 (1), the state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the general fund.

The drafter may use the following language to provide that interest is to be credited to another cash fund rather than to the general fund:

> The state treasurer shall credit all interest and income derived from the deposit and investment of money in the [name of the initial cash fund] to the [name of the alternate cash fund].

If the bill sponsor wants the interest and income to remain in the cash fund, the drafter should use the following language:

> The state treasurer shall credit all interest and income derived from the deposit and investment of money in the [name of the fund] to the fund.

In some cases, the bill sponsor may want a prohibition on spending the principal of the fund. In this case, the drafter should use the following language:

> The principal of the trust fund remains in the fund and shall not be appropriated, transferred, or expended. [Subject to annual appropriation [option 1]] interest or income derived from the deposit and investment of the trust fund [is continuously appropriated [option 2]] [from the fund/to the [agency]] for [specified purpose(s)].

7.5.3.8 Unexpended and Unencumbered Money in the Fund

It is unnecessary to state that unexpended and unencumbered money in a cash fund at the end of a fiscal year does not "revert" to the general fund. This is what happens by default.

Sometimes it may be desirable to transfer excess money remaining in a cash fund at the end of a fiscal year to the general fund or another fund. If the money is to be transferred to the general fund, the drafter should use the following language:

> The state treasurer shall credit any unexpended and unencumbered money remaining in the [name of fund] at the end of a fiscal year to the general fund.

If the money is to be transferred to another cash fund, the drafter should use the following language:

> The state treasurer shall transfer any unexpended and unencumbered money remaining in the [name of fund] at the end of a fiscal year to the [name of other cash fund].

7.5.3.9 Provision for Remaining Balance of Repealed Cash Fund

A bill that repeals a cash fund should specify the disposition of any money remaining in the cash fund when it is repealed. If not specified, the balance of the fund will likely revert to the general fund pursuant to section 24-75-201 (1), C.R.S. Money remaining in a cash fund when it is repealed may be expressly transferred to the general fund or to an existing or newly created cash fund. Example:

> The state treasurer shall transfer all unexpended and unencumbered money in the fund on [date the fund is repealed] to the [general fund/name of cash fund].

7.5.3.10 Exemption From Applicable Maximum Reserve Limitation

If the bill sponsor wishes to exempt a cash fund from the maximum reserve limitation established in section 24-75-402 (1)(e.5), C.R.S., or an alternative maximum reserve established by the joint budget committee as authorized by section 24-75-402 (8), C.R.S., the drafter must add a new paragraph to section 24-75-402 (5), C.R.S., as follows:

> **24-75-402. Cash funds - limit on uncommitted reserves - reduction in the amount of fees - exclusions - repeal.** (5) Notwithstanding any provision of this section to the contrary, the following cash funds are excluded from the limitations specified in this section:
>
> (#) The [fund] created in [C.R.S.].

7.5.3.11 Cash Funding Without Creating a Separate Cash Fund

It is not always necessary to create a cash fund to accomplish cash funding.

> **25-2-113.5. Limited access to information upon consent of all parties.** (10) (a) The executive director of the department of health shall establish fees to be charged each person requesting that his name be placed on the list provided for in subsection (3), (4), or (5) of this section and for the services provided by the registrar in establishing and implementing the registry pursuant to this section. It is the intent of the general assembly that the fees shall cover all direct and indirect costs incurred pursuant to this section.
>
> (b) The fees collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the general fund. The general assembly shall annually appropriate from the general fund to the department of health an amount sufficient to meet expenses incurred pursuant to this section.

7.5.4 Reappropriated Funds

"Reappropriated funds" are money that is appropriated more than once in the same fiscal year. Those funds are a specific subcategory of cash funds but are identified separately from a regular "cash funds" appropriation.

Only in very limited circumstances will an appropriation section be needed for "reappropriated funds."

A good test for whether the "reappropriated funds" term is to be used in an appropriation section is to think of the term describing one of three different types of double counts, i.e., money appropriated that was previously appropriated during that same fiscal year:

- Payments from one department to another for services, such as to the office of information technology for computer services or to the department of law for legal services;
- Pass-through exchanges, such as the pass-through of medicaid funds from the department of health care policy and financing to the department of human services; or
- Cash funds when statutes require an appropriation both into and out of the fund, as in the case of the Colorado heritage communities (smart growth) grant fund in the department of local affairs.

When preparing an appropriations committee amendment to add or modify an appropriation section for a substantive-law bill, the drafter should look under the "State Appropriations" section of the fiscal note for the bill. The legislative council staff fiscal analyst will indicate in this section of the fiscal note the amount, if any, of cash funds and of reappropriated funds that need to be appropriated to cover the costs of implementing the bill.

Subsection (2), below, is an example of an appropriation with reappropriated funds for an appropriation to purchase services from another agency:

> **SECTION #. Appropriation.** (1) For the 2015-16 state fiscal year, $45,700 is appropriated to the department of regulatory affairs for use by the division of securities. This appropriation is from the general fund. To implement this act, the division may use this appropriation to purchase of legal services.
>
> (2) For the 2015-16 state fiscal year, $45,700 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of regulatory affairs under subsection (1) of this section and is based on an assumption that the department of law will require an additional 0.5 FT. To implement this act, the department of law may use this appropriation to provide legal services for the department of regulatory affairs.

Examples of appropriations to purchase services from another agency are in Appendix E.4 of this manual. An example of an adjustment to the long bill appropriation is in Appendix E.3 of this manual.

7.5.5 Bills Funded from Gifts, Grants, and Donations

Sometimes the source of funding for a cash fund in a bill is from gifts, grants, and donations that are promised or pledged from sources outside of state government.

When drafting a provision that includes funding from gifts, grants, and donations, the drafter should include language that gives the state agency authority to accept and expend the money received from gifts, grants, and donations.

Preferred Language:

> (#) THE [NAME OF ENTITY] MAY SEEK, ACCEPT, AND EXPEND GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF THIS [C.R.S. SUBDIVISION].
>
> OR

If the gifts, grants, or donations must be deposited in a cash fund, for example, the gift, grant, or donation is not custodial funds and, therefore, the General Assembly should appropriate it:

> (#) THE [NAME OF ENTITY] MAY SEEK, ACCEPT, AND EXPEND GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF THIS [C.R.S. SUBDIVISION]. THE [NAME OF ENTITY] SHALL TRANSMIT ALL MONEY RECEIVED THROUGH GIFTS, GRANTS, OR DONATIONS TO THE STATE TREASURER, WHO SHALL CREDIT THE MONEY TO THE [NAME OF FUND] FUND. [If creating a new fund, see the canned language for creating cash funds.] [If crediting the money to an existing fund, include ", CREATED IN [C.R.S. SUBDIVISION]."][If the money should be continuously appropriated, then include "MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE [NAME OF ENTITY] FOR [SPECIFIED PURPOSE(S)]." [If it is subject to annual appropriation, then include "SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY, THE [NAME OF ENTITY] MAY EXPEND ANY STATE MONEY FROM THE FUND FOR [SPECIFIED PURPOSE(S)]."]

This method of funding has become disfavored due to the funds not materializing. In an effort to address this concern and ensure that programs are not remaining in the statutes that have not received adequate funding, the General Assembly enacted section 24-75-1303, C.R.S., which requires a state agency to report on the status of its funding to the joint budget committee when a gift, grant, or donation to the state agency is from a nongovernmental source and when the bill creating the program relies entirely on money from gifts, grants, or donations as the funding source for the program.

Chapter 8: Revenue-Raising Bills

8.1 General Legal Background

Article V, section 31 of the Colorado constitution (section 31) requires that "[a]ll bills for raising revenue shall originate in the house of representatives, but the senate may propose amendments, as in the case of other bills." This provision was presumably taken from and modeled after a substantially similar provision in the United States Constitution.[1] In light of this constitutional mandate, it is important that all drafters have a working knowledge of what constitutes a bill to raise revenue - an issue that has been addressed in several Colorado cases and attorney general opinions. The first section of this Chapter discusses how state and federal courts have interpreted the phrase "bills for raising revenue." Section 8.2 of this chapter provides drafters guidelines for dealing with revenue-raising bills in the pre-enactment and post-enactment contexts.

8.1.1 Historical Roots

As a result of the British Parliament's long struggle with the crown for control of the purse strings of the empire, Parliament and many of its American descendants require that revenue bills originate in the "lower house."[2] The right to originate money bills is an ancient and indisputable privilege of the "lower house" of the British Parliament, i.e., the House of Commons. This privilege was awarded the lower house in the belief that the House of Lords, a permanent, hereditary body created by the king, would be more subject to influence by the crown than the House of Commons, a temporary elective body. Hence, it would have been dangerous to permit the Lords to have the power of imposing new taxes.[3]

This privilege of the lower house concerning "money bills" was continued by a substantial number of state constitutions as well as by the federal constitution. At least 19 other states have a so-called "origination clause" in their constitutions that is identical or substantially similar to

[1] U.S. Const. art. I, § 7, cl. (1).

[2] N. Singer, *Sutherland Statutory Construction* [hereafter, "Sutherland"], § 9.06, 581 (5th ed. 1994).

[3] 1B Vernon's Ann. Texas Const., art. 3, § 33, Interpretive Commentary, 433 (West 1997). Similarly, Federalist Paper No. 66 argues that lodging the "exclusive privilege of originating money bills" with the House of Representatives would serve as one of "several important counterpoises to the additional authorities to be conferred upon the Senate," which until the adoption of the 17th amendment to that document, was not directly elected by the people. See J. Madison, A. Hamilton, J. Jay, *The Federalist Papers*, 386 (I. Kremnick ed., Penguin Books 1987).

the one contained in section 31.[4] Although this limitation survives as a historical reminder of Parliament's struggles with the crown, in modern times, the clause expresses a preference for keeping the critical power to tax as close as possible to those subject to it. Under this view, the taxing power should rest exclusively with the lower house, which in the United States, Colorado, and most other states is the House of Representatives. The lower house is presumed to more directly represent the people both because lower houses are customarily larger than their corresponding upper chambers, meaning that each lower house legislator represents fewer people than each upper chamber legislator, and because their membership is usually subject to more frequent elections.[5]

8.1.2 Early Federal Interpretations of Revenue-raising Bills

Historically, courts have accepted variations of three basic definitions of the constitutional phrase "bills for raising revenue."

The first definition was borrowed from Justice Story by Justice Harlan in writing the majority opinion in *Twin City National Bank v. Nebeker*[6] and is probably the most frequently used definition. In *Twin City*, Justice Harlan wrote:

> .... [R]evenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue.[7]

A second definition was set forth in an early federal circuit court case, *United States v. Mayo*:[8]

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[4] *See* Alabama Const. art. IV, § 70; Delaware Const. art. VIII, § 2; Georgia Const. art. 3, § 5, para. 2; Idaho Const. art. III, § 14; Indiana Const. art. IV, § 17; Kentucky Const. § 47; Louisiana Const. art. 3, § 16, para. (B); Maine Const. art. IV, part 3, § 9; Massachusetts Const. part 2, cl. 1, § 3, art. 7; Minnesota Const. art. IV, § 18; New Hampshire Const. part 2, art. 18; New Jersey Const. art. 4, § 6, para. 1; Oklahoma Const. art. 5, § 33; Oregon Const. art. IV, § 18; Pennsylvania Const. art. 3, § 10; South Carolina Const. art. III, § 15; Texas Const. art. 3, § 33; Vermont Const. chapter II, § 6; Wyoming Const. art. III, § 33.

[5] Sutherland, § 9.06, 581; Interpretive Commentary to article 3 of the Texas constitution, § 33, 433-34. Federalist Paper No. 58 discusses the origination clause as among the devices inserted to enforce and maintain the separation of powers and, hence, to secure liberty. In the words of that document: "This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure." J. Madison, A. Hamilton, J. Jay, *The Federalist Papers*, 350 (I. Kremnick ed., Penguin Books 1987).

[6] *Twin City National Bank v. Nebeker*,167 U.S. 196 (1897).

[7] *Id.* at 202-203.

[8] *United States v. Mayo*, Fed. Case No. 15,755, 26 Fed. Cas. 1230, 1 Gall 396 (Cir. Ct. D. Mass. 1813).

> The true meaning of 'revenue laws' in this clause (Article I, Section 7 of the United States Constitution) is, such laws as are made for the direct and avowed purpose for creating and securing revenue or public funds for the service of the government. No laws whose collateral and indirect operation might possibly conduce to public or fiscal wealth, are within the scope of the provision.[9]

A third and more lengthy definition with elements of the two above definitions was set forth in a federal circuit court decision, *United States ex rel. Michels v. James*:[10]

> Certain legislative measures are unmistakenly bills for raising revenue. They impose taxes upon the people, either directly or indirectly, or lay duties, imposts or excises for the use of the government, and give to the person from whom the money is exacted no equivalent in return, unless in the enjoyment, in common with the rest of the citizens of the benefits of good government. It is this feature which characterizes bills for raising revenue. They draw money from the citizen. They give no direct equivalent in return.[11]

8.1.3 Colorado Case Interpretations

In assessing the constitutionality of bills under section 31, Colorado case authority has relied primarily on the construction provided in the *Nebeker* case.

Geer v. Board of Commissioners of Ouray County[12] was the first case of importance dealing with the provisions of the Colorado constitution concerning revenue-raising bills. In this case, a bill authorizing Colorado counties to refund certain of their debts by issuing bonds provided that the principal and interest payments on the bonds would be met through the levy and payment of a property tax. The plaintiff asserted that the act was void as it was a revenue-raising measure that had originated in the Senate. In striking down this contention and upholding the act, the court said:

> A bill for raising revenue, within the meaning of this provision of the constitution (section 31 of article V), is one which provides for the levy and collection of taxes for the purpose of paying the officers and of defraying the expenses of government. This act was not of that character. Its main purpose was to authorize quasi-municipal corporations to refund their debts. The provisions for the levy and

[9] *Id.* at 1231.

[10] *United States ex rel. Michels v. James*, Fed. Case No. 15,464, 26 Fed. Cas. 577, 13 Blatch. 207 (Cir. Ct. S.D. N.Y. 1875).

[11] *Id.* at 578.

[12] *Geer v. Board of Commissioners of Ouray County*, 97 F. 435 (8th Cir. 1899).

> collection of taxes which it contained were mere incidents to the general refunding legislation which it carried.[13]

The court further noted that the act specifically provided that the taxes collected pursuant to the act were to be put aside to pay off the bonds and accrued interest and were not to be used to pay county officers or to defray the expense of government.

Another early Colorado case dealing with this issue was *Colorado National Life Assurance Co. v. Clayton*.[14] In this case, the General Assembly had repealed and reenacted all the laws dealing with insurance, one of which imposed a two percent annual tax on the gross amount of premiums earned within the state. Because of the imposition of the tax, the plaintiff contended that the bill was revenue-raising and, therefore, void as it had originated in the Senate. The Colorado Supreme Court disagreed, stating:

> A bill designed to accomplish some purpose other than raising revenue, is not a revenue-raising measure. Merely because, as an incident to its main purpose, it may contain provisions, the enforcement of which produces a revenue does not make it a revenue measure. Revenue measures are those which have for their object the levying of taxes in the strict sense of the words. If the principal object is another purpose, the incidental product of revenue growing out of the enforcement of the act will not make it a bill for raising revenue. The primary object and purpose of this bill was to regulate insurance companies, and the insurance business in this state. It is a regulation or supervision tax, and the method of arriving at the amount, or because of its operation the act produces an excess which is required to be turned into the general fund, does not affect its validity or render it an act for revenue.[15]

The next Colorado case dealing with revenue-raising bills was *Chicago, Burlington & Quincy Railroad Co. v. School District No. 1 in Yuma County*.[16] The case involved a 1911 amendment to the general school laws of the state enacted in 1877. The amendment modified the taxation provisions of the school laws and, having originated in the Senate, the plaintiff argued that the amendment was a revenue-raising measure and was, therefore, void. The court held to the contrary, stating that the main purpose of the 1877 law was to establish a public school system in the state, and the provisions regarding the levy and collection of taxes were incidental but necessary to the main purpose of the 1877 law. The court then noted:

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[13] *Id.* at 440.

[14] *Colorado National Life Assurance Co. v. Clayton*, 54 Colo. 256, 130 P. 330 (1913).

[15] *Id.* at 259-60.

[16] *Chicago, Burlington & Quincy Railroad Co. v. School District No. 1 in Yuma County*, 63 Colo. 159, 165 P. 260 (1917).

> If the senate had the power to originate a general and complete statute, as was the act of 1877, there does not appear to be any good reason why the senate cannot originate a series of acts when each is but a part of the complete and general law and all taken together are, and amount to the same, as one complete and general act.[17]

The court went on to hold that the levy and collection of taxes for the maintenance of a school system is not taxation for defraying the expenses of government or for the services of government, citing the *Geer* case. The court also stated that because the bill only authorized the imposition of taxes and did not itself impose them it did not constitute the levying of taxes in the strict sense of the word.

8.1.4 Other Case Authority at the Federal and State Levels

The *Geer* and *Chicago Burlington* cases are still good case authority in Colorado regarding what constitutes a bill to raise revenue and they provide the foundation for the consideration of revenue-raising measures under section 31. Moreover, Colorado interprets its origination clause in a manner similar to that provided by federal and other state authority with respect to comparable revenue-raising provisions contained in their respective constitutions. Specifically, a strict or narrow construction of the phrase "revenue-raising bills" is the majority rule, with a particular bill being viewed as nonrevenue-raising whenever possible. A majority of the courts on the federal and state levels that have considered the question have ruled that a revenue-raising bill is one that has as its main or primary objective raising money by taxation to support the general expenses and obligations of the government. If the raising of revenue, even if it is through a tax and essential to the accomplishment of a bill's objective, is merely incidental to the primary purpose of the legislation, it is not a revenue bill.[18] Moreover, many jurisdictions have also held that a bill delegating taxing powers to a municipality is not a revenue bill because it does not, in itself, raise revenue, but merely grants the power to do so.[19]

On more than one occasion, the U.S. Supreme Court has specifically considered this issue as well. In the *Head Money Cases (Edye v. Robinson)*,[20] the Court held that a fee imposed by the federal government on ship operators, rather than on their passengers (the "direct" beneficiaries of the fee), to defray the expenses of immigration, was not a tax. The court found that a tax was, in

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[17] *Id.* at 163.

[18] *See generally*, Vermont Const., ch. II, § 6, annotations, ¶ 6, 257 (Michie 1996). See also Sutherland, § 9.06, 582 (collecting cases, including *Chicago, B & Q. R. Co.* case).

[19] Vermont Constitution, ch. II, § 6, annotations, ¶ 6, 257.

[20] *Head Money Cases (Edye v. Robinson)*, 112 U.S. 580 (1884).

general terms, an exaction going to the general support of the government.[21] In this case, however, the exaction was construed as a fee to create a fund to be raised from those profiting from immigration. In *Millard v. Roberts*,[22] the court held that legislation that imposed a property tax in the District of Columbia to pay for certain railroad improvements was not a bill to raise revenue within the meaning of the origination clause. Essentially, the Court held that any taxes imposed were "but means" to the purposes provided by the legislation.[23] More recently, the Court has held that a Senate-initiated bill providing for a monetary special assessment to pay into a crime victims' fund did not violate the Origination Clause because the legislation raised revenue to support a particular government program and did not raise revenue to support government generally. *United States v. Munoz-Flores*.[24] "Any revenue for the general Treasury that [the section of the legislation mandating the fee at issue] creates is thus 'incidenta[l]' to that provision's primary purpose."[25]

8.1.5 Colorado Attorney General Opinions

Another source of helpful authority pertaining to this matter is contained in legal opinions from the Colorado Attorney General. As stated previously, the Attorney General has rendered several significant opinions regarding certain problems concerning revenue-raising bills. One of these opinions states that a bill that would have the obvious effect of decreasing collected revenue is, nonetheless, a bill for raising revenue.[26] The 1966 Attorney General's opinion takes the form of a letter from Attorney General Duke Dunbar to State Senator Anthony Vollack. In that letter, Attorney General Dunbar opined that a bill repealing food sales tax credits or refunds was a revenue-raising bill required to be introduced in the House of Representatives under section 31. The letter states as follows: "Although Senate Bill No. 36 has the effect of decreasing the revenue to be collected pursuant to Chapter 300, it must be considered as a bill for raising revenue within the meaning of our constitution. The phrase 'raising revenue' as applied to legislative acts does not imply an increase in revenue."[27] This Attorney General opinion was affirmed by the Colorado

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[21] *Id.* at 252.

[22] *Millard v. Roberts*, 202 U.S. 429 (1906).

[23] *Id.* at 675.

[24] *United States v. Munoz-Flores*, 495 U.S. 385, 398 (1990).

[25] *Id.* at 1973.

[26] *See* Opinion No. 66-3941, dated February 3, 1966 (Attorney General's opinion), and Memorandum, dated March 2, 1967.

[27] The position that the origination clause applies in equal measure to bills that would *decrease* as well as increase tax revenue is also consistent with the weight of authority at the federal and state levels. *See*, e.g, *Texas Ass'n of Concerned Taxpayers, Inc. v. U.S.*, 772 F.2d 163, 166 (5th Cir. 1985) (Court notes that "all contemporary courts have adopted the construction apparently given it by Congress, i.e., 'relating to

Attorney General's Office in 1999. For more details, see the discussion under section 8.1.6 of this chapter.

The Colorado Attorney General has also opined that the power of the Senate to propose amendments to bills for raising revenue, as provided in section 31, applies only to pending bills, and not to revenue-raising bills passed at prior sessions.[28]

Another Attorney General opinion on this issue has stated that laws delegating authority to local government entities to levy and collect taxes are not revenue-raising bills because the revenue derived from them would not be used to defray the general expenses of the state government.[29]

8.1.6 Particular Applications

On the rationale that the revenue-raising feature of the legislation at issue was incidental to the main purpose of the act, the Colorado Supreme Court has held that the following types of acts are not bills for raising revenue within the meaning of section 31:

- An act imposing a motor vehicle registration fee. In *Ard v. The People*,[30] the court held that the purpose of registration fees is not the levying or collection of taxes because the fees are in the nature of a license or toll for using the public highways.

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revenue'); *Armstrong v. U.S.*, 759 F.2d 1378, 1381 (9th Cir. 1985) ("The term 'Bills for raising revenue' does not refer only to laws increasing taxes, but instead refers in general to all laws *relating* to taxes.") (Emphasis in original.) *Wardell v. U.S.*, 757 F.2d 203, 205 (8th Cir. 1985) ("We cannot agree that 'revenue-raising' means only bills that increase taxes."); *In re Opinion of the Justices*, 249 Ala. 389; 31 So. 2d 558, 559 (1947) ("If the proposed act affects the amount of revenue which flows into the state treasury...it is one to raise revenue....").

In the *Texas Ass'n of Concerned Taxpayers* case, the fifth circuit commented on the difficulties in formulating any standard of constitutionality to adequately guide Congress in dealing with the origination clause, particularly in terms of a facile distinction between "increasing" and "decreasing" revenue. In the words of the Court: "The fluctuations in national income and corresponding shifts in revenue yields make any label of 'increasing revenue' a slippery and potentially chameleonic one. The same bill may have an effect of increasing revenue under certain economic conditions and decreasing revenue under others." 772 F.2d at 166. *See also Armstrong*, 759 F.2d at 1381 (Such a distinction "may well be impossible to implement, since members of Congress may differ over whether a proposed revenue bill or amendment will 'increase' or 'decrease' taxes overall, and since the same revenue bill may well have varying effects upon the total taxes assessed in different years.").

[28] Memorandum, dated July 9, 1965, Opinion No. 66-3941, dated February 3, 1966, and Memorandum, dated March 2, 1967.

[29] *See* Opinion No. 60-3363, dated January 1, 1960. See also Vermont Constitution, ch. II, § 6, annotations, ¶ 6, 257.

[30] *Ard v. The People*, 66 Colo. 480, 182 P. 892 (1919).

- An act setting up an elaborate code regulating the manufacture, sale, and use of malt, spirituous, and vinous liquors. In *In re Interrogatories of the Senate concerning the Constitutionality of House Bill No. 45*,[31] the court held that the main purpose of the act was to enact a comprehensive liquor code, and the revenue-raising feature was a remote incident to the code.

- An act imposing the gross ton mile tax. In *Public Utilities Commission v. Manley*,[32] the court held that the act in question was regulatory in nature and was not primarily enacted for the purpose of raising revenue.

- In upholding the rates that a city charged for providing water and sewer services, the court, in *Western Heights Land Corporation v. City of Fort Collins*,[33] held that a revenue-raising measure is one levying a tax to defray general municipal expenses. If the principal object is to defray the expense of operating a utility directed against those desiring to use the service, the incidental production of income does not make it a revenue-raising measure.

On the basis of the authority discussed above, the Office advises the General Assembly and its members that bills that affect the amount of general fund revenue collected by the state should be introduced in the House of Representatives. The Colorado Attorney General's Office has confirmed its support of this approach. Specifically, in response to a December 23, 1998, letter from Senator Ray Powers to the Attorney General asking for a review of the 1966 Attorney General's opinion, solicitor general Richard Westfall wrote:

> We have researched the matter and conclude that [the 1966 Attorney General's opinion] is correct. The term 'bills for raising revenue' ... means bills which provide for the levy and collection of taxes. A bill levying taxes may cause a tax to decrease as well as increase. Accordingly, art. V, § 31, precludes the senate from introducing measures that decrease state taxes.

On November 10, 1999, the Colorado Attorney General's Office reaffirmed this approach. See letter from Attorney General Salazar, dated November 10, 1999.

Applying the case authority handed down at the federal level, by other states, and by Colorado, produces the following general principles for assessing whether a statutory measure "raises revenue" within the meaning of section 31 and thus must be introduced in the House of Representatives:

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[31] *In re Interrogatories of the Senate concerning the Constitutionality of House Bill No. 45*, 94 Colo. 215, 29 P.2d 705 (1934).

[32] *Public Utilities Commission v. Manley*, 99 Colo. 153, 60 P.2d 913 (1936).

[33] *Western Heights Land Corporation v. City of Fort Collins*, 146 Colo. 464, 362 P.2d 155 (1961).

- If a bill authorizes a local governmental unit to levy a tax the bill is not one for raising revenue.
- If a bill simply appropriates money from the state treasury without affecting state revenue, the bill is not one for raising revenue.
- If a bill commits a certain amount annually from revenue received from general taxes without requiring an increase in the tax levy, the bill is not one for raising revenue.
- If a bill is a bona fide regulatory measure, the bill is not one for raising revenue even though it levies a tax, toll, or fee.
- If a bill imposes a tax, toll, or fee in the nature of compensation for the use of governmental facilities or for compensation for government employees' services, the bill is not one for raising revenue.

8.1.7 Phrases Used to Describe Revenue-Raising Bills

Some of the stock phrases describing revenue-raising bills that have evolved from the principles discussed above and that the courts frequently use in their decisions are as follows:

- Revenue-raising bills are those that levy taxes in the strict sense of the word.
- Revenue-raising bills are those whose direct purpose is to raise revenue to defray the general expenses of the state government.
- Revenue-raising bills are those whose direct purpose is to raise revenue payable into the state treasury for general governmental uses.
- A tax is a compulsory payment that entitles the taxpayer to receive nothing in return other than the rights and privileges of good government which are enjoyed by all citizens alike.
- Bills that draw money from the citizen but give no direct or equivalent benefit in return are bills for raising revenue.
- Revenue-raising bills are limited to bills that transfer money from the people to the state, but do not include bills that appropriate money from the treasury of the state to particular uses of the state.

8.1.8 Phrases Used to Describe Non-Revenue-Raising Bills

Most of the cases arising under the revenue-raising clauses of the federal constitution and the various state constitutions have held that bills that fall into one of the following categories are not revenue-raising bills:

- Bills that delegate authority to local governmental units to levy taxes upon local property for local purposes.
- Bills that provide for the regulation of some business, trade, profession, or activity under the police power of the state.
- Bills that amend existing nonrevenue-raising statutes by increasing the license fees, tolls, or taxes imposed by the statute.
- Bills that appropriate money from the state treasury.
- Bills that impose a tax, toll, or fee as compensation for use of government facilities or for specific services provided by the government.

8.2 Guidelines for Dealing with Revenue-Raising Bills in the Pre-Enactment and Post-Enactment Contexts

The responsibilities of the Office in implementing section 31 require different, sometimes conflicting, legal perspectives. Performance of these responsibilities is complicated by the fact that the meaning of section 31 may differ depending on whether it is being interpreted to apply to a bill during the legislative process or to enacted law, i.e., after the presumption of constitutionality has attached. This section 8.2 is intended to provide guidance in applying section 31 to bills in the pre-enactment and post-enactment contexts. The pre-enactment status of bills for raising revenue discussed in section 8.2.1 of this chapter contrasts with the post-enactment status of these bills discussed in section 8.2.2 of this chapter.

8.2.1 What is a Bill for Raising Revenue During the Legislative Process?

Section 31 is, in effect, a constitutional rule of legislative procedure. It is intended to govern legislative behavior during the course of the legislative process.[34] The General Assembly has not adopted written rules or other guidelines for determining the practical application of section 31 in the legislative process. The only guidance has come from the Legislative Drafting Office Research Memorandum referred to in section 8.1 of this chapter. The Office has interpreted and applied the principles set forth in the Research Memorandum since its publication, but the application of those principles to different taxes and in various legislative scenarios remains unclear.

The principles described in the Research Memorandum were based on judicial decisions that interpreted section 31 after enactment of the bill in question at which point the presumption of constitutionality attaches.[35] Courts often construe section 31 and other constitutional rules of legislative procedure (such as the "single subject" rule contained in article V, section 21 of the Colorado constitution) to uphold legislation in the face of an alleged minor technical violation. Thus, courts often defer to the legislature in their application of these rules, and they uphold the legislature's action as reflected in the enacted bill. As a result, judicial decisions do not provide guidelines for interpreting constitutional rules of legislative procedure that are consistent with the restrictive purposes that the rules are to serve. One of these purposes is to preserve the integrity of legislative policy deliberations and decisions. For these reasons, this Office has often taken the position that constitutional rules of legislative procedure should be literally interpreted and strictly construed when the rules are applied before the enactment of a bill, i.e., during the legislative process.

Drafters should use the following guidelines in:

1. Determining whether a bill is or may be a bill for raising revenue that should be introduced in the House; and

2. Giving advice as to whether amendments that affect revenue can be offered to such bills during the legislative process.

The guidelines attempt to apply section 31 in the context of specific taxes and specific legislative scenarios. Drafters should use GUIDELINES NOS. 1 to 5 when a bill request is received and the

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[34] "It is obvious that the constitutional rules of procedure take precedence over all other rules of legislative procedure. They are judicially reviewable and enforceable, though in some jurisdictions they are considered to be addressed exclusively to the legislature and courts either refuse to consider questions of compliance or else find them to be only directory." Sutherland, section 7.01, at 561-2 (5th ed. 1994).

[35] *See Lamm v. Barber*, 192 Colo. 511, 565 P.2d 538 (1977) (Law held unconstitutional only if violation of the constitution proven beyond a reasonable doubt).

primary question is whether the request involves a bill for raising revenue and whether the drafter should advise the sponsor that the bill should be introduced in the House of Representatives. Drafters should use GUIDELINE NOS. 6 to 9 when a bill has already been introduced and the question arises whether a revenue-raising amendment can be added. Consistent with the above discussion, these guidelines reflect a strict or literal interpretation of section 31 because this interpretation seems most appropriate in view of the restraints imposed by constitutional rules of legislative procedure in the pre-enactment context.

Guideline No. 1. A bill that would increase or decrease state income tax, state sales tax, state use tax, state estate tax, or any other state tax that goes to the state general fund and becomes available for general state purposes should be introduced in the House of Representatives.

Examples:

1. Bills that increase or decrease these taxes include bills that:

    a. Increase or decrease a tax rate;

    b. Extend tax liability to a new individual or class of taxpayers or increase an individual's or class's tax liability;

    c. Exempt an individual or class of taxpayers from tax liability or reduce an individual's or class's tax liability;

    d. Define or redefine the income or transaction subject to tax; or

    e. Create credits or deductions against an existing tax.

    On the other hand, a bill that creates an "income tax checkoff" is not a bill that increases or decreases the income tax, because this legislation merely designates the public purpose fund to which a taxpayer wishes to direct some of his or her refund. This legislation does not affect revenue; it merely allows a taxpayer to direct money that would have been returned to the taxpayer to a particular cause that the taxpayer favors.

2. Other state taxes and fees that go to the state general fund and become available for general state purposes include: State retail marijuana sales tax, state cigarette tax, state

tobacco tax, state excise tax on beer, state excise tax on liquor, license fees for beer and liquor, parimutuel racing fees, and insurance premium tax.[36]

Guideline No. 2. Courts have interpreted section 31 to require introduction of a bill for raising revenue in the House even though the obvious effect of the bill is to **decrease** revenue.[37]

Guideline No. 3. Section 31 may require the introduction of a bill for raising revenue in the House **even if it doesn't increase or decrease revenue**, if the bill amends an act that was originally revenue-raising and relates to the levying and collection of taxes and the procedures therefor.[38]

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[36] The taxes referenced in paragraph 2 were instituted in part in an effort to regulate some aspect of personal behavior or business conduct, but they are general fund taxes and as such have an impact on the money available for general state purposes.

Further, each of these taxes and fees was originally enacted in a bill that originated in the House, and the Attorney General's Opinions discussed above indicate that the power of the Senate to propose amendments to bills for raising revenue applies only to pending bills, and not to revenue-raising bills passed at prior sessions.

While the enactment of an insurance premium tax in a Senate bill was held not to violate section 31 because the primary purpose of the bill was regulation of insurance companies, *Colorado National Life Assurance Co. v. Clayton*, 54 Colo. 256, 130 P. 330 (1913), the current insurance tax was enacted in a House bill subsequent to *National Life Assurance*. A bill enacting a liquor regulation code was sustained against a section 31 challenge on the grounds that its chief purpose was other than raising revenue; however, the bill was ultimately declared invalid because the bill was not within a Governor's special session agenda. *In re Senate Interrogatories*, 94 Colo. 215, 29 P.2d 705 (1934). Moreover, the current laws enacting the excise taxes on liquor and beer and the current laws authorizing liquor license fees were enacted in House bills. Finally, the purpose of keeping the taxing power closest to the people is better served by assuming that bills increasing or decreasing general fund taxes should be introduced in the House.

[37] This guideline stems from the 1966 Attorney General's Opinion that states that the phrase "raising revenue" as applied to legislative acts does not imply an increase in revenue. One explanation for this apparently anomalous requirement is as follows: It could be inferred that, when a bill that decreases income taxes is introduced, the General Assembly will assume that the bill puts the entire subject of income taxes before them in an unrestricted sense, without limitation as to increase or decrease. If the bill is amended to add an increase in taxes or to eliminate the decrease and substitute an increase, the bill will be saved from a violation of section 31 because it was introduced in the House. It should be noted that a title that limits the ability of the General Assembly to amend such a bill to increase taxes could provide a safeguard against this danger. On this point, the reader's attention is also directed to the case authority discussed in note 4, above.

[38] The 1966 Attorney General's Opinion also says that the power of the Senate to propose amendments to bills for raising revenue applies only to pending bills, i.e., bills for raising revenue pending in the current session that have already passed the House, and not to bills passed at prior sessions. This means a bill that amends an act that was originally a bill for raising revenue (for example, the income or sales and use tax laws) must be introduced in the House even if it does not increase or decrease revenue. The supporting theory is that "amendments are to be construed together with the original act to which they relate as constituting one law." 82 C.J.S. *Statutes* 896.

Caveat: This interpretation seems a bit extreme. For example, while a bill that accelerates the date by which those collecting sales tax must remit the revenue to the state is perhaps a bill for raising revenue, a bill that has a merely procedural or administrative effect and that has a title that limits amendments to procedural or administrative matters should not be considered a bill for raising revenue.

General Exception to Guideline No. 3: If the bill does not increase or decrease revenue but merely provides for the disposition of revenue once collected, it is not a bill for raising revenue.[39]

Examples relating to general exception:

1. Appropriation bills are not bills for raising revenue.

2. If a bill neither increases nor decreases a general fund tax but instead merely diverts existing general fund revenue to a special purpose fund, it is not revenue-raising and may be introduced in the Senate. *See* Senate Bill 79-536, which transferred a portion of sales and use tax revenue attributable to sales or use of vehicles or related items that had been credited to the general fund to the highway users tax fund.[40] The key distinction here is that section 31 does not apply when there is merely a change in the allocation of the revenue generated by a tax without any increase or decrease in the amount of revenue generated by the affected tax.

Guideline No. 4. A bill imposing a tax or fee that is in the nature of a users' fee and is earmarked for a state special purpose fund (i.e. a cash fund rather than the state general fund) usually is not considered to be "revenue-raising" and may, accordingly, be introduced in the Senate.

Example: A bill increasing motor fuel tax proceeds that are constitutionally dedicated to the highway users tax fund may be introduced in the Senate.

Caveat: A bill that increases the state income or sales tax or another state general fund tax and diverts the new revenue to a state special purpose fund poses a difficult question; however, the

[39] 1966 Attorney General's Opinion.

[40] The transfers to the highway users tax fund mandated by Senate Bill No. 536 were repealed in 1981, effective July 1, 1986. See 1981 Colorado Sess. Laws, Ch. 469, 1890-91. Through S.B. 97-1, the General Assembly reestablished the transfer of a portion of the sales and use tax attributed to the sales or use of vehicles and related items that had been credited to the general fund to the highway users tax fund. See 1997 Colorado Sess. Laws, Ch. 262, 1531-1535.

bill should start in the House because of the potentially erosive effect of such an exception on the general rule stated in section 31.[41]

Guideline No. 5. Since there is no longer a state property tax that could go to the state general fund and all property taxes are imposed by local governments, property tax bills are not revenue-raising and may be introduced in the Senate.

Guideline No. 6. A House bill that, as introduced, does not increase or decrease state general fund taxes may be amended in the House to increase or decrease state general fund taxes.[42]

Comment: Since section 31 requires that bills for raising revenue "originate" in the House of Representatives but does not require that such bills be bills for raising revenue at the moment of their introduction in the House, a literal interpretation of section 31 does not bar House amendments that increase or decrease state general fund taxes.

Guideline No. 7. A House bill that, as passed by the House, does not increase or decrease state general fund taxes should not be amended in the Senate to increase or decrease state general fund taxes. Such a Senate amendment results in origination of a revenue-raising bill in the Senate in violation of section 31.[43]

Guideline No. 8. A Senate bill that, as introduced, does not increase or decrease state general fund taxes should not be amended in the Senate or the House to increase or decrease state general fund taxes. Such a Senate or House amendment results in origination of a revenue-raising bill in the Senate in violation of the general rule.

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[41] *See*, e.g., House Bill 90-1305 imposing a charge through the income tax to fund the uninsurable health insurance plan. This bill had been introduced in the Senate but was reintroduced in the House after an inquiry to this Office related to revenue-raising issues.

[42] Statements in Guideline Nos. 6 to 9 regarding whether amendments are permissible are subject to the further qualification that the amendments come within the title of the bill to be amended as well as the requirements of article V, section 17 (no change in original purpose of bill) and section 21 (bill must have single subject) of the Colorado constitution.

[43] This interpretation differs from the manner in which the origination clause has traditionally been interpreted at the federal level. Specifically, federal courts have held that the Senate may amend a particular bill to increase the federal equivalent of (state) general fund taxes even though the same bill as passed by the House decreased such taxes. *See*, e.g., *Wardell*, 757 F.2d at 205 (Sustaining constitutionality of 1982 "Tax Equity and Fiscal Responsibility Act" against origination clause challenge even though the bill as introduced in the House reduced revenue and the Senate "SEBEC" version, that was ultimately enacted, increased revenue). In assessing the constitutionality of Senate amendments to House-initiated revenue measures, federal courts have generally required only that the Senate amendments be germane to the subject matter of the bill, i.e., revenue collection, and within the Senate's power to propose. *See Flint v. Stone Tracy Co.*, 220 U.S. 107, 31 S.Ct. 342, 346, 55 L.Ed. 389 (1911) (Senate substitution of corporate income tax for inheritance tax contained in house bill); *Wardell*, 757 F.2d at 205; *Rowe v. U.S.*, 583 F. Supp. 1516, 1518 (D. Del. 1984) ("Once a bill has passed the House, ...no constitutional reason why the Senate may not make amendments germane to the subject matter of the legislation.").

Guideline No. 9. A Senate bill that, as introduced, increases or decreases state general fund taxes violates section 31 even if it includes a referendum clause so that the bill does not become effective until approved by vote of the people. It is still a "bill for raising revenue" that did not originate in the House. This practice could result in a more obvious violation of section 31 if the referendum clause were removed by amendment during its passage by the two houses.

8.2.2 Would a Court Uphold the Bill Under Section 31 After Enactment?

If a bill is introduced or an amendment is adopted that is inconsistent with the guidelines in section 8.2.1 of this chapter, this Office may be asked to advise as to whether a court would uphold the bill or amendment after the bill is enacted. These guidelines should still be used as a frame of reference. However, the presumption of constitutionality that attaches upon statutory enactment may tip the balance in favor of the bill or amendment in the case of a "close call".

The following circumstances illustrate how this Office should approach the question of post-enactment validity: A Senator wishing to introduce a bill in the Senate resists our conservative advice that a bill that may be revenue-raising should be introduced in the House. While the Senator believes that the bill is not revenue-raising as introduced, the Office should point out that the bill's revenue-raising aspects may be enhanced by amendment, i.e., a clear tax increase or decrease might be added or amendments could alter the basic structure of the affected tax. Further, the Office should also work with the Senator on composing a bill title that would avoid amendments likely to render the bill one for raising revenue.

The Senator may remain unconvinced by the arguments presented in section 8.2.1 of this chapter concerning the viability of section 31 in the pre-enactment context and may believe the central question is whether a court would uphold the bill upon enactment in the face of a constitutional challenge under section 31. That question presents different issues from those present while a bill is pending.

Sutherland notes that "The question of origin is not often litigated," but "[t]he general tendency favors narrow construction of what constitutes a revenue bill which must originate in the lower house." Further, Sutherland notes that the United States Supreme Court "has indicated a preference for restricting the provision to the narrowest possible terms."[44]

The Office has not found cases in which the Colorado Supreme Court has ruled a bill unconstitutional under section 31.[45]

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[44] Sutherland, 581, 582. See also the U.S. Supreme Court cases discussed under section 8.1.4.

[45] *See* discussion of *In re Senate Interrogatories*, above.

Colorado decisions upholding bills against section 31 challenges have employed three basic tests:

Test No. 1. Does the bill levy taxes to be used for general state purposes?[46] (In short, does it affect any of the taxes that go to the general fund that are listed in GUIDELINE NO. 1?)

Test No. 2. Is the principal object of the bill to levy taxes in the strict sense of the word or is the principal object to accomplish some other purpose and to raise revenue incidental to that purpose?[47]

Test No. 3. Does the bill amend a bill that was originally an act for raising revenue?[48]

The following advice is offered on the basis of these tests:

Advisory No. 1.0. A court is likely to uphold under section 31 a Senate bill that has as its principal object some purpose other than an increase in a general fund tax but that creates or increases a non general fund tax "as an incident" to its principal purpose.

Advisory No. 2.0. A court would likely find that a Senate bill that has as its clear principal object an increase in income or sales and use tax, or both, violates section 31.

The following hypothetical examples (ADVISORIES NOS. 3 to 5) would be cases of first impression. It seems likely that a court would uphold these Senate bills in the face of a section 31 challenge, although they could pose hard cases depending on the particular facts.

Advisory No. 3.0. A court would likely find that a Senate bill that has as its principal object an increase in any of the other general fund taxes listed in GUIDELINE NO. 1 violates section 31. However, a court probably would uphold the Senate bill on the grounds that the original law that enacted the tax had as its principal object the regulation of certain behavior, such as smoking or drinking, or the regulation of some commercial activity, such as the insurance business or racing.[49]

Advisory No. 4.0. A Senate bill that has as its principal object some purpose other than the creation of or an increase in a general fund tax, such as the funding of a new or existing state program, but that creates or increases a general fund tax to fund the new or existing state program would probably be upheld if a court finds that the new or existing state program was the principal object of the bill. The fact that a court will also likely presume that enacted legislation is constitutional also adds to the likelihood that such a bill would be upheld. However,

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[46] *Geer v. Board of County Commissioners of Ouray County*, 79 F. 435 (8th cir.1899).

[47] *Colorado National Life Assurance Co. v. Clayton*, 54 Colo. 256, 130 P. 330 (1913).

[48] *Chicago, Burlington & Quincy Railroad Co. v. School District No. 1 in Yuma County*, 63 Colo. 159, 165 P. 260 (1917).

[49] *See* cases cited in note 9 above.

the revenue-raising aspect of the bill, i.e., the creation or increase of a general fund tax, is probably not "incidental" in the sense that it would not be occurring merely by chance or as a minor consequence of the principal object of the bill.

Advisory No. 4.1. A Senate bill that contains several substantive programs and provides general fund increases to fund those programs is subject to the analysis provided under ADVISORY NO. 4.0.

Advisory No. 4.2. A Senate bill that redefines income to reduce the income taxes of a particular class of individuals would probably be upheld.

Advisory No. 5.0. A Senate bill that enacts or implements a tax that was imposed or authorized by a vote of the people through a constitutional amendment should be introduced in the House. However, a court challenge based on section 31 might fail on the theory that those subject to the taxing power had imposed the tax on themselves.

Chapter 9: Article X, Section 20 the Taxpayer's Bill of Rights (TABOR)

9.1 Introduction

Voters approved article X, section 20 of of the Colorado constitution (also called "The taxpayer's Bill of Rights" and "TABOR"[1]) in November 1992. TABOR's principal purpose was to protect citizens from unwarranted tax increases.[2] However, state and local governments in Colorado consequently needed to make significant operational changes to many government functions, such as budgeting, elections, and contracting.

As a drafter, it is important to understand the purposes and provisions of TABOR to recognize how it may affect bills concerning state or local government operations. Since the meaning of some of its provisions is unclear, it is also important for drafters to be aware of relevant legislative and judicial interpretations of TABOR. By recognizing issues arising from this constitutional provision, drafters can inform sponsors of potential issues relating to their bills and of possible alternatives for addressing these issues. This function is important because any successful legal challenge under TABOR may result in the refund of any revenues collected, kept, or spent illegally with 10% annual interest from the time of the initial violation.[3]

This section provides an overview of the major provisions of TABOR that are likely to affect bills. For a more detailed analysis of a particular TABOR issue, consult the Office of Legislative Legal Services research database (Knowledgebase).

9.2 Applicability to the State and to Local Governments

TABOR applies to "districts," which are defined as "the state or any local government, excluding enterprises".[4] This definition raises several interpretive issues because TABOR does not define

[1] TABOR was also sometimes referred to as "Amendment # 1".

[2] *Matter of Title, Ballot Title and Submission Clause, and Summary with Regard to a Proposed Petition for an Amendment to Constitution of State of Colo. Adding Subsection (10) to Sec. 20 of Art. X (Amend Tabor 25)*, 900 P.2d 121 (Colo. 1995); In Re Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

[3] Colo. Const. art. X, §20 (1).

[4] Colo. Const. art. X, §20 (2)(b).

the terms "the state", "local government", and other issues arise from the constitutional definition of the term "enterprise".

9.2.1 The State and Local Governments

While TABOR does not define the terms "the state" and "local government", the focus of this constitutional provision appears to be the imposition of certain limits on the state government and on local governments.[5] This intent can be discerned from the preferred interpretation stated in article X, section 20 (1) to "reasonably restrain most the growth of **government.**" (Emphasis added.)

9.2.1.1 The State

Article 77 of title 24 sets forth state fiscal policies relating to TABOR and provides a statutory definition for the term "the state". "State" is defined as the central civil government of the state of Colorado, consisting of:

1. The legislative, executive, and judicial branches of government;
2. All organs of the three branches of government (including the departments of the executive branch, the legislative houses and agencies, and the appellate and trial courts and court personnel); and
3. State institutions of higher education.[6]

This definition of "state" specifically excludes enterprises and special purpose authorities. And while the exclusion of enterprises is constitutionally based, a question remains whether it is constitutionally permissible to exclude special purpose authorities from the definition.

A special purpose authority is an entity created pursuant to state law to serve a valid public purpose. A special purpose authority is either a political subdivision of the state or an instrumentality of the state; however, a special purpose authority is not an agency of the state and is not subject to administrative direction by any department, commission, bureau, or agency of the state. Special purpose authorities include the Colorado housing and finance authority, the Colorado water resource and power development authority, the Colorado compensation insurance authority, and the public employees' retirement association.[7]

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[5] *Havens v. Bd of County Commr's*, 924 P.2d 517, 520 (Colo. 1996).

[6] Section 24-77-102 (16)(a), C.R.S.

[7] *See* section 24-77-102 (15), C.R.S.

Before TABOR, the General Assembly and the Colorado Supreme Court did not view special purpose authorities as part of state government.[8] One recognized purpose of special purpose authorities is to allow certain traditional governmental functions to be performed outside the constraints of state government thought to hamper the ability to perform these functions in a "business-like" fashion.

Excluding special purposes authorities from the state for purposes of TABOR raises additional questions about whether special purpose authorities are local governments or whether they are entirely outside the scope of this constitutional provision. While not involving a special purpose authority, The Colorado Supreme Court's decision in *Submission of Interrogatories on Senate Bill 93-74*, 852 P.2d 1 (Colo. 1993), may indicate how the court would rule if presented with this issue.

One argument raised in that case was that the board of the Great Outdoors Colorado Trust Fund created by article XXVII, section 6 of the Colorado constitution (also approved at the 1992 general election) was not a "district" for purposes of TABOR. Article XXVII, section 6 states that the board is a political subdivision of the state but is not an agency of state government. While finding that the board is not a local government, a private entity, or an enterprise, the court concluded that "the best reading of Amendment 1 is to exclude from state fiscal year spending limits only those entities that are non-governmental, and the board is essentially governmental in nature. This interpretation of Amendment 1 is the interpretation that 'reasonably restrain[s] most the growth of government.'"

Since special purpose authorities also seem essentially governmental, the court's interpretation may cause a reevaluation of the statutory exclusion of special purpose authorities from the definition of the term "the state". Many special purpose authorities have taken action to be declared enterprises to ensure that they do not fall within the scope of TABOR.

9.2.1.2 Local Governments

There is consensus that in TABOR, "local government", (through its commonly accepted meaning and its dictionary, statutory, and case law definitions) applies to counties, municipalities, special districts, and school districts. This interpretation similarly appears to include home rule counties and municipalities, since article X, section 20 (1) specifies that it supersedes any conflicting constitutional provisions (such as article XX), charter provisions, or other local provisions.

We do not know at this time if special purpose authorities are local governments for purposes of TABOR. Although they are political subdivisions of the state, special purpose authorities generally serve a statewide interest rather than purely a local interest and do not have some of the same characteristics of local governments, such as identifiable geographical boundaries.

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[8] *See, e.g., In re Interrogatories by the Colorado Senate (Senate Resolution No. 13) concerning House Bill No. 1247 Fifty-first General Assembly*, 193 Colo. 298, 566 P.2d 350 (1977); *Colorado Association of Public Employees v. Board of Regents*, 804 P.2d 138 (Colo. 1990).

9.2.2 Enterprises

Since "enterprises" are specifically excluded from the definition of "district", qualified enterprises are not subject to TABOR. However, the definition of "enterprise" presents many difficult interpretation questions. An "enterprise" is defined as "a government-owned business authorized to issue its own revenue bonds and receiving under 10% of its annual revenue in grants from all Colorado state and local governments combined."[9] Whether something qualifies as an "enterprise" under TABOR is solely dependent upon whether the constitutional definition is satisfied.[10]

Yearly fluctuations in grants to enterprises will be the most likely reason enterprises qualify or disqualify from year to year. Drafters should exercise caution in making broad interpretations of the constitutional criteria when designating enterprises or granting authority to designate enterprises and discuss the possible implications of such interpretations with the bill sponsor.

9.2.2.1 Government-owned Business

The meaning of the term "government-owned business" is uncertain since TABOR does not define the term. A court will make this determination based upon whether an entity is both "government-owned" and a "business" given the ordinary meaning and understanding of these terms.[11] It seems that such businesses would not perform typical governmental functions and instead would perform activities that have some counterpart in the private sector, such as utilities, airports, and recreational facilities. Since an enterprise must receive less than 10% of its annual revenue from Colorado state and local governments combined, it also appears that an enterprise is a self-supporting operation, similar to a private business.

It is unclear whether a government-owned business can only be an activity or can be an entire governmental entity. Based upon the position that an enterprise can be a governmental entity, some state entities (i.e., the state lottery division, the Colorado lottery commission, the division of correctional industries) have been statutorily designated as enterprises if they meet the constitutional criteria. In addition, some local governmental entities have been statutorily authorized to declare themselves as enterprises (i.e., county hospitals and water, sewer, and drainage operations).

The few court decisions involving enterprise status do not give a consistent position on whether an entire entity can be a TABOR enterprise. In *Regional Transportation District v. Romer*, Denver District Court, 93 CV 3069, the court refused to declare the Regional Transportation District an

[9] Colo. Const. art. X, §20 (2)(d).

[10] For a more thorough review of "enterprise" designations, see "Creating an Enterprise Pursuant to TABOR" and "Creating an Enterprise Pursuant to TABOR - Part 2".

[11] *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859 (Colo. 1995).

enterprise under TABOR. Noting that the RTD itself levies a sales tax and receives almost 60% of its revenue from tax money, the court concluded that RTD is a government, not a government-owned business. This decision was not appealed.[12]

The Colorado Supreme Court has held that the E-470 Highway Authority was not an enterprise for purposes of TABOR.[13] The court found that the authority did not constitute a "government-owned business" due to the authority's ability to impose several different types of taxes. After the court issued this decision, the taxing authority of the E-470 Highway Authority was repealed. The authority subsequently filed a declaratory judgment action, and the Arapahoe County District Court declared that the authority qualified as an enterprise.[14]

9.2.2.2 Authority to Issue its Own Revenue Bonds

The requirement that an enterprise has "authority to issue its own revenue bonds" raises three issues.

- First, only the **authority** to issue revenue bonds is required to qualify as an enterprise. The actual issuance of revenue bonds is not required.
- Second, there is precedent for statutorily imposing conditions on the authority to issue revenue bonds, including prior approval by another body. For example, the issuance of revenue bonds by a board of public hospital trustees of a county hospital is not effective for up to thirty days to give the board of county commissioners an opportunity to review the bond issue and to make an objection that would prevent the issuance of the revenue bonds.[15] Similarly, the revenue-bonding authority of the Colorado lottery commission is limited to a maximum amount of $10 million and may be exercised only upon the approval of both houses of the General Assembly and the Governor.[16]
- Third, it is not known whether the revenue bonds must be issued by the government-owned business itself or whether the bonds can be issued by the governing

[12] In another unpublished decision, a trial court ruled that an urban renewal authority is an enterprise because it is a "government-appointed authority" that can issue bonds. The opinion, which was not appealed, did not provide a basis for this finding, nor did it explain how a "government-appointed authority" satisfies the constitutional requirement that an enterprise must be a "government-owned business." *Bd. of County Comm'rs v. City of Broomfield*, 95 CV 1430-3, Boulder County District Court, ruling and order re: declaratory judgment claim dated January 17, 1997.

[13] *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859 (Colo. 1995).

[14] *In re the Petition of the E-470 Highway Authority*, 96 CV 946, Arapahoe County District Court, order dated June 26, 1996. The decision was not appealed.

[15] Section 25-3-304 (4)(b), C.R.S.

[16] Section 24-35-221 (1)(a), C.R.S.

board of the government-owned business or by the government owning the business. Some approaches taken so far give the governing board of the business the authority to issue revenue bonds for the business.[17]

Any of these approaches to granting revenue bonding authority may or may not survive a constitutional challenge. Exercise caution in deciding who should have authority to issue revenue bonds for purposes of obtaining enterprise status and what authority is being granted.

9.2.2.3 Receives Less Than 10% of Annual Revenue in Grants

Another question in whether an operation qualifies as an enterprise under TABOR relates to what is considered a "grant" for purposes of the 10% limitation. The fact that TABOR does not define "grant" has led to different interpretations of the term. One interpretation is that grants include any kind of support, tangible or intangible, cash or in kind, that a government may give to an enterprise, such as property and sales tax exemptions or infrastructure. Another interpretation would include only grants received through formal grant programs.

For state enterprises, "grant" is defined to mean "any direct cash subsidy or other direct contribution of money from the state or any local government in Colorado that is not required to be repaid."[18] The definition also specifically excludes: 1) Any indirect benefits conferred by the state or local governments; 2) any revenues resulting from rates, fees, assessments, or other charges imposed for goods or services provided by an enterprise; and 3) any federal funds, no matter whether these funds pass through the state or local governments to an enterprise.[19] Statutes governing certain state enterprises that were enacted before section 24-77-102, C.R.S., also include similar definitions of "grant". For purposes of designating new state enterprises, it is necessary only to cross-reference the definition of "grant" in section 24-77-102 (7), C.R.S.

In the few legislative enactments relating to local government enterprises, such as county hospitals and water, sewer, and drainage enterprises, statutory definitions of the term "grant" similar to the definition in section 24-77-102 (7), C.R.S., were used.

[17] For example, the governing body of an institution of higher education has authority to issue bonds for auxiliary facilities, such as bookstores, student unions, and parking garages, section 23-5-101.5, C.R.S.; the Colorado lottery commission has authority to issue revenue bonds for the state lottery division, section 24-35-221, C.R.S.

[18] Section 24-77-102 (7)(a), C.R.S.

[19] Section 24-77-102 (7)(b), C.R.S.

9.3 Limitation on Fiscal Year Spending

TABOR limits state fiscal year spending by providing, in part, that "(t)he maximum annual percentage change in state fiscal year spending equals inflation plus the percentage change in state population in the prior calendar year, adjusted for revenue changes approved by the voters after 1991."[20] A similar fiscal year spending limit is imposed on local governments by TABOR, which states that "(t)he maximum annual percentage change in each local district's fiscal year spending equals inflation in the prior calendar year plus annual local growth, adjusted for revenue changes approved by the voters".[21]

TABOR limits the growth of fiscal year spending of state government and of local governments respectively by capping the amount by which spending can annually increase. TABOR spending limits are much broader in scope than any limits previously imposed on the state or on local governments since TABOR spending limits restrict the revenues that can be received annually.

Although the fiscal year spending limit of a government allows a certain amount of expenditures and reserve increases, the government can only spend the revenues it has collected. If actual revenues are less than the amount of allowable fiscal year spending, a government's spending limit becomes the amount of actual revenue and results in a "deflated" base for use in future years. This is commonly referred to as the "ratcheting down" effect. Where actual revenues exceed the spending limit, the government is required to refund the excess revenues in the next fiscal year unless the voters approve a revenue change to allow the excess revenues to be retained by the government.[22]

9.3.1 Fiscal Year Spending

The fiscal year "spending limits" imposed by TABOR are in reality limits on the revenues the state and each local government can raise each year. By defining "fiscal year spending" to include not only "all district expenditures" but also "reserve increases", spending includes all revenues collected by a government, whether the revenues are spent (in which case it is an "expenditure") or not (in which case it is saved as a "reserve increase").

Spending limits apply to all governmental revenues except those expressly excluded from "fiscal year spending." "Fiscal year spending" does not include reserve transfers or expenditures, or any expenditures or reserve increases:

[20] Colo. Const. art. X, §20 (7)(a).

[21] Colo. Const. art. X, §20 (7)(b).

[22] Colo. Const. art. X, §20 (7)(d).

1. For refunds of excess state revenues made in the current fiscal year or in the subsequent fiscal year;
2. From gifts;
3. From federal funds;
4. From collections for another government;
5. From pension contributions from employees;
6. From pension fund earnings;
7. From damage awards; and
8. From property sales.[23]

"State fiscal year spending" as defined in section 24-77-102 (17), C.R.S., contains the same exclusions as specified in the constitution. The statute also excludes net lottery proceeds, except for portions distributed to the capital construction fund for payment of debt service of specified obligations and for portions that spill over into the general fund. This additional exclusion results from the General Assembly harmonizing the provisions of TABOR and article XXVII (the Great Outdoors Colorado Program) and was upheld by the Colorado Supreme Court in *Submission of Interrogatories on Senate Bill 93-74*, 852 P.2d 1 (Colo. 1993).

Since revenues within any of the specified classifications are not subject to the fiscal year spending limits imposed by TABOR, the drafter should keep these classifications in mind when drafting because the drafter may or may not want expenditures relating to proposed legislation to be subject to any fiscal year spending limit.

9.3.2 Calculation of Fiscal Year Spending Limits

9.3.2.1 Allowable Annual Growth

Under article X, section 20 (7)(a), the state spending limit (and with it, state revenues) may increase or decrease by the amount of annual change in inflation and in state population.[24] For a local government, the spending limit increases or decreases depending on the amount of change in inflation and in annual local growth.[25] Two definitions of "local growth" that depend on whether a local government is a school district are set forth in article X, section 20 (2)(g).

[23] Colo. Const. art. X, §20 (2)(e).

[24] Colo. Const. art. X, §20 (7)(a).

[25] Colo. Const. art. X, §20 (7)(b).

9.3.2.2 Fiscal Year Spending Base

In calculating a government's spending limit, the growth factors are not applied to all of its fiscal year spending for the previous year. Certain types of fiscal year spending, such as annual debt service payments, refunds made pursuant to TABOR, and voter-approved revenue changes, are excluded to arrive at a fiscal year spending base. Other adjustments are made to the spending base to reflect the qualification and disqualification of enterprises and any increases and decreases in bonded indebtedness.[26]

Once a government's fiscal year spending base is determined, the appropriate growth factors are applied only to the spending base. Once this calculation is made, the fiscal year spending excluded from the spending base is added back in which results in the maximum amount of fiscal year spending allowed in a given year. This calculation can result in a government's allowable fiscal year spending either increasing or decreasing from the previous year's level of fiscal year spending.

9.3.2.3 Voter-approved Revenue Changes

Although voter-approved revenue changes are not included in the fiscal year spending base for purposes of applying the growth factors, they are included in the allowable amount of fiscal year spending so that a government may always spend or save these revenues. The two basic types of voter-approved revenue changes under TABOR are:

1. Matters relating to taxes that require voter approval under article X, section 20 (4)(a) (new tax, tax rate increase, mill levy increase, etc.); and

2. Matters not relating to taxes (e.g., a number of cities, counties, and other districts have obtained voter approval to keep taxes and other revenues that exceed the amount of their spending limit).

Obtaining voter approval to retain or spend revenues that exceed a spending limit is informally referred to as "de-Brucing"after a proponent of TABOR, Douglas Bruce. Keep in mind the option of referring proposed legislation for voter approval to ensure that revenues that would result from the proposed legislation are always included within the fiscal year spending limit as a voter-approved revenue change.

9.3.3 Special Considerations When Drafting Tax Reduction Bills

Bills that provide tax relief (i.e., create or modify a tax exemption or credit or reduce a tax rate) may create a temporary TABOR refund mechanism that is triggered only when state revenues exceed the constitutional spending limit or a permanent tax cut that is allowed regardless of

[26] *See* Colo. Const. art. X, §20 (7)(d).

whether the state has excess revenues. Since both TABOR refund mechanisms and permanent tax reductions have the same impact on general fund revenues, the only difference between the two is whether the excess revenues that the General Assembly already has on hand can be used to replace the lost general fund revenues. For refund mechanisms, excess revenues are used to replace the lost general fund revenues and the amount of total state general fund revenues remains unchanged. For permanent tax reductions, lost general fund revenues are not replaced with excess state revenues. The drafter should clarify this point so the fiscal note division and the economists in the Legislative Council can track state revenues and analyze the fiscal impact of proposed bills. If the sponsor intends for a particular credit or tax reduction to be a temporary TABOR refund mechanism, include in the legislative intent that "the general assembly finds and declares that the (tax credit, exemption, etc) is a reasonable method of refunding excess state revenues".

9.4 Voter Approval Requirements

TABOR requires voter approval in advance for increases in taxes or debt, revenue changes, and weakening of any revenue, spending, or debt limit.

9.4.1 Tax Increases

TABOR requires prior voter approval for "any new tax, tax rate increase, mill levy above that for the prior year, valuation for assessment ratio increase for a property class, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain to any district."[27] If a bill includes any of these actions involving taxes, voter approval is required before the action can take effect.

TABOR[28] provides two exceptions to this voter-approval requirement: 1) If annual government revenue falls below the amount needed for annual payments for bonds, pension, and final court judgments, the voter approval requirement is suspended and revenues may be raised to cover the shortfall;[29] and 2) if the emergency tax requirements specified in TABOR are met.[30] It is assumed that voter approval is not required to reinstate a tax rate temporarily reduced or to eliminate a tax credit temporarily granted when the original action was taken to effect a refund under TABOR.[31] Similarly, while a bill may not raise a tax rate that has been previously lowered by

[27] Colo. Const. art. X, §20 (4)(a).

[28] *Id.*

[29] Colo. Const. art. X, §20 (1).

[30] Colo. Const. art. X, §20 (6).

[31] *See* Colo. Const. art. X, §20 (1).

a separate bill, it may be possible for a single bill to lower a tax rate temporarily and provide for the rate to go back up to the existing rate at some point in the future. To date, a court has not resolved these issues.

9.4.1.1 Taxes vs. Nontaxes

The voter-approval requirement of TABOR applies only to matters directly relating to taxes, not the imposition or increase of any charge. The term "tax" is not defined by TABOR and has not been defined by statute or case law for purposes of this requirement.

The manner in which the courts have distinguished between taxes and other types of governmental charges before the approval of TABOR may suggest how a court would define the term "tax" for purposes of this constitutional provision. The courts have generally distinguished between taxes and other charges based upon the nature of the particular charge involved rather than how the charge is designated (whether a charge is called a tax or a fee).

In distinguishing between taxes and other charges, the courts first determine whether the charge is a pecuniary charge imposed upon persons or property by legislative authority to raise money for a public purpose. If so, the charge may be a tax unless it is a fee, fine, or special assessment.

Fees imposed to defray the cost of a particular governmental service have been held by the courts not to be taxes if the amount charged is reasonably related to the overall cost of the service, although mathematical exactitude is not required. But a fee may be a tax if the principal purpose of the fee is to raise revenues for general public purposes rather than to defray the expenses of the particular service provided.

Fines are charges imposed by a judicial or administrative tribunal as a penalty for an offense. **Special assessments** are charges imposed to finance a specific local improvement that confers a special benefit to the property assessed that is at least equal to the charge and directed to the users of that improvement. If a governmental charge is not a fine, fee, or special assessment, the charge is probably a tax.

If any doubt remains after applying this analysis, ask the following additional questions:

1. Is there any evidence that the people who voted for TABOR intended that this charge be subject to voter approval?
2. Will a vote on the charge "reasonably restrain most the growth of government"?
3. Is the charge commonly called a "tax"?
4. How broadly based is the charge?

See the research database for a checklist analysis in determining whether a charge is a tax.

9.4.1.2 Examples of Tax Increases Requiring Voter Approval

"**New tax**": Statewide tourism tax.

"**Tax rate increase**": Increase in sales or income tax rate.

"**Mill levy above that for the prior year**": Only local governments impose property tax mill levies since TABOR prohibits the state from imposing a property tax.[32] The Colorado Supreme Court ruled that a ballot issue approved before the adoption of TABOR may contain a mechanism to increase a mill levy to repay debt without seeking further voter approval.[33] The same decision specifies that voter approval would be required for "those taxes that are new or represent increases from the previous year". It appears, therefore, that any mill levy increase that is not related to a ballot issue approved before TABOR took effect requires voter approval.

"**Valuation for assessment increase for a property class**": Pursuant to article X, section 3 (the "Gallagher" amendment), the General Assembly sets the valuation for assessment ratio for residential real property. Although the residential ratio decreased since the inception of the Gallagher amendment, it stayed the same for the 1999-2000 property tax cycle even though it should have increased under the Gallagher amendment. Because of TABOR, any increase in the ratio would require voter approval.

"**Extension of an expiring tax**": Extension of the sales and use tax imposed by the Denver Metropolitan Scientific and Cultural Facilities District. This tax was originally scheduled to expire July 1, 1996, but was extended by voter approval until June 30, 2006.

"**Tax policy change directly causing a net revenue gain to any district**": This phrase is not defined and poses the most difficulty in trying to ascertain its meaning. Some tax policy changes subject to voter approval are easier to identify than others. For example, the creation of a sales tax exemption does not require voter approval since it does not result in a net revenue gain. However, the repeal of a sales tax exemption appears to require voter approval since such repeal would result in increased revenues. In other situations, a bill may contain several related tax policy changes - some that would cause a revenue gain and some that would cause a revenue reduction. The Colorado Attorney General has issued an opinion that, in such case, a good faith fiscal analysis of the changes is required and that voter approval would not be required if a revenue gain caused by a particular tax policy change is offset by a reduction due to another related change.[34] More difficult questions involve actions such as changes in property tax

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[32] Colo. Const. art. X, §20 (8).

[33] *Bolt v. Arapahoe County School District #6, a/k/a/ Littleton Public Schools*, 898 P.2d 525 (Colo. 1995).

[34] *See* Attorney General Opinion 96-1, dated February 27, 1996. This opinion analyzed whether proposed changes to the Urban and Rural Enterprise Zone Act constituted a tax policy change resulting in a net revenue gain. *See also* the OLLS memorandum, dated 01/15/1996, titled "Test to be applied in determining

classifications and decreases in the vendor's fee for collecting sales taxes since it is more difficult to determine if such actions directly result in a net revenue gain.[35]

9.4.1.3 Mandatory Ballot Title Language for Tax Increases

TABOR specifies language that must be used to begin ballot questions for tax increases.[36] *See* the discussion under section 9.5.2 of this chapter.

9.4.2 Multiple-fiscal Year Financial Obligations

TABOR requires prior voter approval for the "creation of any multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever without adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years."[37] Two exceptions are:

1. Refinancing bonded debt at a lower interest rate; and
2. Adding new employees to existing government pension plans.

9.4.2.1 Debt

The voter-approval requirement for "multiple-fiscal year ... debt" is not an issue from the state's perspective since the state cannot incur debt. Article XI, section 3 expressly prohibits the incurrence of state debt, and article X, section 2 requires that the estimated annual expenses of state government be paid by annual taxes.

Prior voter approval of the incurrence of debt by a local government is not a new idea. Before the approval of TABOR, voter approval of local government indebtedness was generally required under various constitutional, statutory, and home rule charter provisions. Requiring voter approval of "multiple-fiscal year ... debt" did not result in any significant change in procedures for issuance of debt by local governments.

See the discussion under section 9.5.2 of this chapter relating to the ballot title language that must be used for ballot questions for bonded debt increases.

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what is a tax policy change directly causing a net revenue gain to any district under article X, section 20 (4)(a) of the Colorado constitution".

[35] *See* the OLLS memorandum, dated 03/26/1997, titled "Proposals to fund the Colorado travel and tourism authority from the sales tax vendor's fee of businesses affected by travel and tourism". In the memorandum, the OLLS took the position that a decrease in the vendor's fee was not a change in tax policy that directly resulted in a net revenue gain.

[36] Colo. Const. art. X, §20 (3)(c).

[37] Colo. Const. art. X, §20 (4)(b).

9.4.2.2 Multiple-fiscal Year Financial Obligations Other than Debt

Before TABOR, judicial determinations and legislative actions held that certain types of instruments were not "debt". These include revenue bonds, certificates of participation, lease-purchase agreements, water bonds, and other multi-year contracts that did not involve a pledge of the full faith and credit of the government or that are subject to annual appropriation.

While these instruments may not be "debt", they may now be subject to TABOR, which requires prior voter approval for "any multiple-fiscal year ... **financial obligation whatsoever**".[38] (Emphasis added.) This phrase raises the question whether every form of multi-year contract that involves the payment of money requires prior voter approval, no matter whether the contract is subject to annual appropriation and therefore terminable at will by the government at the end of each fiscal year. Under a broad interpretation, voter approval would be required for all leases, lease-purchase agreements, leases involving certificates of participation, employment contracts, equipment maintenance agreements, intergovernmental agreements, major construction contracts, and any other type of contract operating for more than one year.

To date, there have been few interpretations of the phrase "multiple-fiscal year ... financial obligation whatsoever". Section 24-30-202 (5.5), C.R.S., provides that, in general, state contracts that are subject to annual appropriation should not be considered multiple-fiscal year financial obligations for purposes of article X, section 20 (4)(b). However, the statutes continue to provide that the state is prohibited from entering into leases involving certificates of participation until there is a final court determination as to the constitutionality of the issuance of certificates of participation.[39]

In *Board of County Commissioners of Boulder County v. Dougherty, Dawkins, Strand, & Bigelow, Inc.*, 890 P.2d 199 (Colo. App. 1994), the Colorado Court of Appeals held that a lease-purchase agreement subject to annual renewal or appropriation was not a "multiple-fiscal year direct or indirect debt or other financial obligation" and therefore did not require voter approval. In its analysis, the court of appeals found the words "debt" and "obligation" to be virtually synonymous. This decision was not appealed; however, in a subsequent case the Colorado Supreme Court overruled *Dougherty Dawkins* to the extent that the phrases "multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever" and "debt by loan in any form" were held to be synonymous.[40]

In *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859 (Colo. 1995), the Colorado Supreme Court interpreted the phrase "other financial obligation whatsoever" to include obligations not

[38] Colo. Const. art. X, §20 (4)(b).

[39] *See* sections 24-82-703, 24-82-705, and 24-82-801, C.R.S.

[40] *Submission of Interrogatories on House Bill 99-1325*, 979 P.2d 549 (Colo. 1999).

commonly treated as "debt" and to indicate that TABOR was intended to encompass a broad scope of financial obligations not limited to general obligation bonds. Both revenue bonds and intergovernmental loans were held by the court to constitute financial obligations under TABOR.

In *Submission of Interrogatories on House Bill 99-1325*, 979 P.2d 549 (Colo. 1999), the Colorado Supreme Court considered whether revenue anticipation notes (known as "RANs")[41] would constitute a "multiple-fiscal year direct or indirect debt or other financial obligation whatsoever." The court held that, consistent with its decision in *Nicholl v. E-470*, the phrase "multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever" is broader than the phrase "debt by loan in any form", but that the phrase is not without bounds. The court confirmed that lease-purchase agreements for equipment, such as copy machines, computers, or road graders, do not constitute financial obligations requiring voter approval because they do not involve the borrowing of funds or pledge the credit of the state.

In contrast, the court held that RANs are different from lease-purchase agreements for equipment because the state is receiving money in the form of a loan from investors and that there is an implied unconditional promise to repay the RANs. The fact that payment is discretionary beyond the first year is not controlling in determining whether an obligation is a multiple-year financial obligation. Rather, the entire obligation must be looked at as a whole. In addition, the court held that the fact that the amount of the RANs to be issued was substantial made it reasonable that voters would have expected the RANs to be submitted to them for their approval.

9.4.3 Voter-approved Revenue Changes Not Associated with Tax Increases

"Voter-approved revenue changes", as used in the spending limits imposed by TABOR, includes tax increases that must receive prior voter approval. This phrase also allows ballot issues on revenue changes that do not involve tax rate increases. TABOR also states that "(v)oter-approved revenues changes do not require a tax rate change".[42] It would appear that such a vote can occur in anticipation of excess revenues received by a government in a given year or after excess revenues are collected. Another type of "voter-approved revenue change" would be authorization to expend revenues resulting from a new revenue source that does not require voter approval. For example, authority to spend revenues resulting from a new or increased fee would ensure that the amount of estimated fee revenues could always be kept or spent.

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[41] As authorized by H.B. 99-1325, the state could issue RANs to finance transportation projects throughout the state. The state would pledge future federal and state funds to be received by the state to repay the RANs.

[42] Colo. Const. art. X, §20 (7)(d).

9.4.4 Weakening of Other Revenue, Spending, and Debt Limits

TABOR states that "[o]ther limits on district revenue, spending, and debt may be weakened only by future voter approval."[43] Identifying other revenue, spending, and debt limits and determining whether a proposed action would "weaken" a limit may be difficult. The issue is further complicated because TABOR also states that it supersedes "conflicting" provisions of state and local law.[44] The drafter must consider whether a proposed action would weaken a state or local limit on revenue, spending, or debt or whether such limit has been superseded by TABOR.

In one of the few interpretations of this requirement, the Attorney General issued an opinion that the statutory 5.5% property tax revenue limitation in section 29-1-301, C.R.S., is an "other limit" that cannot be ignored or repealed without voter approval.[45] Under this interpretation, local governments must calculate property tax limits pursuant to both TABOR and section 29-1-301, C.R.S., and comply with the one that is more restrictive.

To decide at what level voter approval is required, determine whether a proposed legislative action involves a revenue, spending, or debt limit of the state or of local government and whether a proposed legislative action weakens the limit. A statewide vote is not necessarily required just because a statutory limit is modified. For example, section 22-53-117, C.R.S., restricts the amount of additional property tax revenues that a school district can raise with voter approval. This is known as the "local override limit". It is the position of the Office that a statutory increase to the local override limit does not require statewide approval. Since the limit is a school district limit, only the approval by the voters of the district subject to the limit is required by TABOR. (*See* Knowledgebase)

9.5 Ballot Issues

9.5.1 Ballot issues at November odd-numbered year elections

TABOR states that "(b)allot issues shall be decided in a state general election, biennial local district election, or on the first Tuesday in November of odd-numbered years."[46] The phrase "ballot issue" is defined as "a non-recall petition or referred measure in an election."[47] These provisions raise the issue of whether the election provisions of TABOR apply only to taxing,

[43] Colo. Const. art. X, §20 (1).

[44] Colo. Const. art. X, §20 (1).

[45] *See* Attorney General Opinion No. 93-8, dated August 27, 1993.

[46] Colo. Const. art. X, §20 (3)(a).

[47] Colo. Const. art. X, §20 (2)(a).

revenue, and spending measures arising from TABOR itself or whether they apply to all elections and all ballot issues.

Ballot questions involving TABOR arise in part due to other constitutional provisions that relate to the rights of initiative and referendum and to the authority of the General Assembly to propose amendments to the state constitution. Article V, section 1 (1) and (4) and article XIX, section 2 provide for statewide initiatives and referendums as well as for constitutional amendments proposed by the General Assembly being submitted at the general election. In addition, current statutes and home rule city charters authorize or require certain questions to be submitted to local voters at special elections.

In *Zaner v. City of Brighton*, 917 P.2d 280 (Colo 1996), the Colorado Supreme Court concluded that the election provisions of TABOR apply only to issues of government financing, spending, and taxation arising under TABOR and that they have no bearing on the ability to schedule special elections on local measures not arising under TABOR. In *Zaner*, the court specifically held that because TABOR applies only to fiscal ballot issues, the city of Brighton's August special election to transfer a utility franchise did not violate TABOR's election provisions.

To clarify the scope of these election provisions, sections 1-41-102 and 1-41-103, C.R.S., specify that only ballot issues arising under TABOR, whether state or local issues, can be submitted at a November election in an odd-numbered year. The "Issues arising under ..." language should be construed to include only those matters that TABOR *requires* to be submitted, i.e., tax increases, debt increases, and the like.[48] State matters arising under TABOR must be in the form of:

1. State constitutional amendments submitted by the General Assembly;
2. State legislation and state constitutional amendments submitted by initiative petition;
3. Measures referred to the people by the General Assembly;
4. Measures referred to the people by referendum;
5. Questions referred by the General Assembly; and
6. Questions initiated by the people.[49]

Local matters arising under TABOR must be in the form of:

1. Home rule charter amendments submitted by initiative petition or referred by the governing body of the home rule entity;

[48] *See* sections 1-41-102 (4) and 1-41-103 (4), C.R.S.

[49] Section 1-41-102, C.R.S.

2. Ordinances, resolutions, or franchise proposals;

3. Measures referred to the people by referendum;

4. Questions referred by the governing body of the local government; and

5. Questions initiated by the people.[50]

For purposes of both state and local matters arising under TABOR, a "question" is a proposition in the form of a question meeting TABOR requirements without reference to any specific state law or constitutional provision. For example, when a government collects more revenue than allowed under its spending limit, a ballot question asking permission for the government to exceed its spending limit by the amount of excess revenues is a question that could be submitted at a November odd-numbered year election.

When drafting bills, drafters should consider specifying at which elections:

1. A particular issue may be submitted to local voters; or

2. Bills or concurrent resolutions may properly be referred to the voters by the General Assembly.

To refer a constitutional amendment at the proper election, whether or not the proposed amendment arises from TABOR, begin as follows:

> **SECTION 1.** At the election held on November, __ (insert date & year), the secretary of state shall submit ....

For referred bills arising from TABOR, begin:

> **SECTION 2. Refer to people under referendum.** At the election held on November, __ (insert date & year), the secretary of state shall submit this act by its ballot title to the registered electors of the state for their approval or rejection. Each elector voting at the election may cast a vote either "Yes/For" or "No/Against" on the following ballot title: "Shall [insert language here]?" Except as otherwise provided in section 1-40-123, Colorado Revised Statutes, if a majority of the electors voting on the ballot title vote "Yes/For", then the act will become part of the Colorado Revised Statutes.[51]

[50] Section 1-41-103, C.R.S.

[51] *See* Observation 9, below, for an example of having the secretary of state refer a TABOR question directly to the voters.

9.5.2 Required Ballot Language for Tax and Bonded Debt Increases

Use the precise language specified in article X, section 20 (3)(c) to begin ballot questions for tax increases and for bonded debt increases as follows:

> Shall (district) taxes be increased (first, or if phased in, final, full fiscal year dollar increase) annually...?"
>
> Shall (district) debt be increased (principal amount), with a repayment cost of (maximum total district cost), ...?

Regarding the constitutional ballot language:

Observation 1. The language specified in article X, section 20 (3)(c) applies only to ballot questions involving **tax increases and bonded debt increases**. Ballot issues other than tax increase and bonded debt questions are not required to begin with the language specified in article X, section 20 (3)(c). In *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994), one challenge involved a municipal ballot question to grant a gas and electricity franchise within the city. Although the Colorado Supreme Court recognized that the ballot issue also sought approval of a contingent tax increase, the court held that the city of Boulder was not required to begin the ballot question with the constitutional ballot language for tax increases since the primary purpose of the ballot question was to grant the franchise.

Although the ballot language for ballot questions not concerning tax or bonded debt increases is left to the discretion of the drafter, ballot language should always adequately express the true intent and meaning of the measure being submitted. Nothing prohibits such ballot questions from adopting a format similar to that constitutionally specified for tax and bonded debt increases (e.g., a ballot question for the extension of an expiring tax could include a dollar amount of how much revenue could be expended under a government's spending limit in the first fiscal year after extension and in each fiscal year thereafter). For example, see the ballot language in section 32-13-105, C.R.S., to extend the scientific and cultural facilities district tax.

Observation 2. Since article X, section 20 (3) specifies only the first few words of the ballot language for tax and bonded debt increases, there is discretion in completing the ballot language. For example, the ballot language for the reinstatement of the Colorado tourism promotion tax reads as follows:

> Shall state taxes be increased by $13,100,000 annually in the first full fiscal year of implementation, and by $13,100,000 as adjusted for inflation plus the percentage change in state population for each fiscal year after the first full fiscal year of implementation, by reinstating the 0.2 percent sales tax on tourist-related items, including lodging services, restaurant food and drinks, ski lift admission, private tourist attraction admission, passenger automobile rental, and tour bus and

> sightseeing tickets for the purpose of funding statewide tourism marketing and promotional programs under the Colorado tourism board in order to assist future tourism growth and promote Colorado's continuing economic health?

If a concurrent resolution amending the state constitution contains a TABOR ballot question, it is also subject to Office guidelines for drafting ballot titles for concurrent resolutions. For these guidelines, *see* section 10.2 of this manual.

While the ballot title in the bill or resolution is in lower case, the secretary of state's rule 4.8.1 requires it to be printed in all uppercase, which complies with article X, section 20 (3)(c) of the state constitution.

Observation 3. Consolidated ballot issues involving bonded debt increases and tax increases to repay the debt are permissible under TABOR since both topics are naturally related and connected to one subject. The ballot title for a consolidated bonded debt and tax increase must include the ballot language in article X, section 20 (3)(c) for both the bonded debt and tax increases. *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994).

Observation 4. Ballot language for tax or bonded debt increases must contain a dollar estimate as required by article X, section 20 (3)(c). In *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994), a challenge was made to a combined bonded debt and tax ballot question that asked, in part, for approval of increased property taxes "in an amount sufficient to pay the principal of and interest on such bonds." Observing that the city was seeking approval of an open-ended tax increase, the Colorado Supreme Court held that this portion of the ballot question violated the requirements of TABOR by not including an estimate of the full fiscal year dollar increase in property tax.

Observation 5. The question exists whether the dollar amount of a tax increase, as required to be stated in the ballot question, can increase after the first fiscal year. While "voter-approved revenue changes" are specifically excluded from a government's spending base for purposes of calculating its fiscal year spending limit,[52] it is not clear whether voters can approve a tax increase that allows tax revenues to increase in the future.

Proponents of TABOR argue that taxes can be increased only in fixed annual dollar amounts and the amount stated in the ballot question cannot be exceeded without additional voter approval. A different approach was taken in the ballot question for the Colorado tourism promotion tax set forth in observation 2 above. In this ballot question, a set dollar amount was stated for the first fiscal year and, for future fiscal years, the same dollar amount as adjusted for inflation and changes in state population. This approach was challenged in *Campbell v. Meyer*, Denver District Court, 93 CV 4343. In its decision, the District Court upheld the ballot language but reserved judgment on the constitutionality of the revenue formula until after the election. The Court of

[52] Colo. Const. art. X, §20 (7)(d).

Appeals dismissed this case on appeal on the ground of mootness since the voters defeated the proposal.

Some ballot questions approved by municipal voters allowing tax revenues to increase by the actual amount raised by the increased rate of tax have been upheld. In one of these cases, City of *Aurora v. Acosta*, 892 P.2d 264 (Colo. 1994), the Colorado Supreme Court upheld ballot question language for a municipal sales tax rate increase that expressed the increase as a dollar amount in the first year, but also allowed the city to keep and spend any and all revenue derived from the tax increase in future years without limitation as to amount.

Observation 6. It appears that a specific tax rate does not have to be stated in a combined bonded debt and tax increase ballot question where the proposed tax is to repay the indebtedness. In *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994), the Boulder County School District and the City of Boulder asked for voter approval of a specified amount of bonded indebtedness and of tax increases to pay the indebtedness "without limitation as to rate or amount". Noting that TABOR does not prohibit this type of authorization, the Colorado Supreme Court concluded that the voters authorized the local governments to adjust the tax rates as necessary to repay the debt incurred. The court held "districts may seek present authorization for future tax rate increases where such rate increases may be necessary to repay a specific, voter-approved debt" so long as any rate change is consistent with the stated estimate of the final fiscal year dollar amount of the tax increase.

Observation 7. In *Campbell v. Meyer*, Denver District Court, 93 CV 4343, which involved the ballot language for the reinstatement of the Colorado tourism promotion tax (*see* Observation 2 above), a District Court held that capital letters should be used as they appear in article X, section 20 (3)(c). Taking this one step further, the Secretary of State has adopted rules that require the entire ballot question to appear in capital letters.

Observation 8. While bills and concurrent resolutions referred by the General Assembly will set forth the ballot question to be submitted to the voters statewide, bills authorizing a particular TABOR issue to be submitted to local voters by initiative or referendum may or may not specify the ballot language.[53] If a bill is silent as to ballot language, it is the responsibility of the local government to formulate the ballot question in accordance with TABOR.

Observation 9. An alternative to referring an entire bill to the people for statewide voter approval can be found at section 43-4-703, C.R.S. This section addresses the need to obtain voter approval before the executive director of the department of transportation can issue revenue anticipation notes (RANs). Rather than refer the entire bill authorizing RANs to the voters, the bill was structured so that it would become law, but section 43-4-703, C.R.S., required the secretary

[53] For an example of the ballot title being specified for a local government election, *see* section 32-13-105, C.R.S.

of state to submit a question to the voters statewide before any RANs could be issued. Drafters should keep this in mind as a possible alternative method for seeking statewide voter approval under TABOR.

9.6 Emergencies

9.6.1 Emergencies

The term "emergency" is defined by TABOR in terms of what cannot be an emergency. An "emergency" cannot be "economic conditions, revenue shortfalls, or district salary or fringe benefit increases."[54] Governments are left to determine and declare emergencies on a case-by-case basis since "emergency" has not been further defined by statute or case law.

9.6.2 Emergency Reserves

Beginning in 1993, the state and local governments are required to set aside an emergency reserve.[55] The amount required for 1993 was 1% of fiscal year spending, for 1994 2% of fiscal year spending, and for 1995 and years thereafter 3% of fiscal year spending. Unused money in the emergency reserve is carried forward from year to year.

Emergency reserves can be expended only for "declared emergencies". However, TABOR does not specify a procedure for the declaration of an emergency to spend emergency reserve money. Section 24-77-104 (3), C.R.S., provides that a declaration of a state emergency for purposes of expending the state emergency reserve must be made:

1. By the passage of a joint resolution which is approved by a two-thirds majority of both houses of the General Assembly and by the Governor; or

2. By the Governor pursuant to section 24-32-2104 (4), C.R.S.

While ensuring that money is available for emergencies, TABOR creates a significant disincentive to spending any emergency reserves. Once emergency reserve money is expended, the required replenishment of the emergency reserve constitutes a reserve increase that counts as "fiscal year spending". Since the replenishment of the emergency reserve must fit within a government's fiscal year spending limit, the amount of money available for other government services and programs will likely be reduced.

[54] Colo. Const. art. X, §20 (2)(c).

[55] Colo. Const. art. X, §20 (5).

9.6.3 Emergency Taxes

The authority granted to governments by TABOR to impose emergency taxes without prior voter approval is severely limited.[56] First, emergency taxes can only be imposed after the emergency reserve is depleted. Secondly, this provision does not grant "any new taxing authority" so a government cannot levy any tax that it is otherwise not legally authorized to levy. Thirdly, emergency property taxes are specifically prohibited. In addition, separate two-thirds majority votes of the governing body of a government are necessary to declare an emergency and to impose an emergency tax. Section 24-77-105, C.R.S., sets forth the procedures for the state to impose an emergency tax.

An emergency tax can only be imposed until the next election occurring more than sixty days after the emergency declaration, and the tax will lapse unless ratified by the voters. Even if ratified by the voters, emergency taxes are not included in fiscal year spending for purposes of calculating the government's spending limit. Finally, any emergency tax revenues not expended on the emergency must be refunded within 180 days after the end of the emergency.

9.7 Miscellaneous Requirements and Prohibitions

9.7.1 Property Taxes

9.7.1.1 Local Government Property Tax Revenue Limitation

Besides the spending limitation and the voter approval requirements of TABOR, local governments are subject to a property tax revenue limitation. According to article X, section 20 (7)(c), a local government's property tax revenues cannot increase any faster than the rate of "inflation" plus "local growth" unless the voters approve a property tax revenue change. The terms "inflation" and "local growth" are defined in article X, section 20 (2)(f) and (2)(g), respectively. It is possible for a local government to be within its spending limit while exceeding its property tax revenue limit. Excess property tax revenues must be refunded unless voters authorize the local government to retain the excess revenues.

9.7.1.2 Prohibitions

TABOR expressly prohibits several types of taxes relating to property. Article X, section 20 (8)(a) prohibits any "new or increased transfer taxes on real property". Real estate transfer taxes existing at the time TABOR was approved were not abolished. However, article X, section 20 (4)(a) would require voter approval for any extension of an existing real estate transfer tax.

[56] Colo. Const. art. X, §20 (6).

Article X, section 20 (8)(a) also prohibits the state from imposing a new real property tax. In addition, the imposition of emergency property taxes is prohibited by article X, section 20 (6).

9.7.1.3 Business Personal Property Exemptions

Article X, section 20 (8)(b) allows the state and local governments to enact "cumulative uniform exceptions and credits to reduce or end business personal property taxes." This language appears to allow individual governments to establish business personal property tax exemptions or credits for specific classes or to abolish business personal property taxation completely.[57] The uniformity requirement seems to prevent the granting of such exemptions or credits on an individual business-by-business basis.

9.7.1.4 Property Tax Assessment Procedures

Article X, section 20 (8)(c), governing the assessment of property for taxation purposes:

1. Eliminates the legal presumption in favor of the accuracy of the assessor's valuation of property;
2. Requires valuation notices to be mailed annually regardless of whether any change in valuation occurred (this allows property owners to appeal annually);
3. Requires the value of residential real property to be determined solely by the market approach to appraisal; and
4. Requires assessors to consider foreclosure sales and government property sales as comparable market sales for property valuation purposes.

9.7.2 Income Taxes

Article X, section 20 (8)(a) contains several provisions relating to income tax. The imposition of any local government income tax is expressly prohibited, although the courts have already interpreted article X, section 17 to prohibit the imposition of income taxes by local governments. In addition, any income tax rate increase or new state definition of taxable income can only take effect for the next taxable year. Before TABOR, such income tax changes could be made in the current tax year without violating the article II, section 11 prohibition against retrospective laws.

Article X, section 20 (8)(a) also requires that any income tax law change after July 1, 1992, must "require all taxable net income to be taxed at one rate, excluding refund tax credits or voter-approved tax credits, with no added tax or surcharge." Since a flat rate state income tax is

[57] For example, section 39-3-118.5, C.R.S., exempts business personal property from the levy and collection of the property tax until such business personal property is first used in the business after acquisition.

currently imposed, this provision prevents the flat rate from being replaced by a graduated income tax. This flat rate requirement is being interpreted by some to disallow new income tax credits, except for refund or voter-approved tax credits. Since income tax credits are taken after the flat rate is applied to taxable income, the Office has taken the position that income tax credits do not violate the flat rate requirement and are still allowed.[58]

[58] Among the income tax credits that have been established since TABOR's enactment are: Section 39-22-119,(child care expenses); section 39-22-122, (purchase of long-term care insurance); section 39-22-520, (investment in school-to-career programs); and section 39-22-522, (donation of conservation easement).

Chapter 10: Resolutions and Memorials

10.1 Applicable Legislative Rules

Drafting resolutions and memorials is quite different from drafting bills, with the exception of drafting concurrent resolutions that propose amendments to the state constitution. Resolutions and memorials are classified by Senate Rule No. 30 and by House Rule No. 26. Senate Rule No. 30 reads, in pertinent part, as follows:

Rules of the Senate

30. Resolutions and Memorials

Resolutions and Memorials shall be of the following classes:

(a) (1) Senate concurrent resolutions, which shall:

(A) Propose amendments to the state constitution or recommend the holding of a constitutional convention. ...

(B) Ratify proposed amendments to the federal constitution. ...

...

(b) Senate joint resolutions, which pertain to:

(1) The transaction of the business of both houses.

(2) The establishment of investigating committees composed of members of both houses.

(3) An expression of the will of both houses on any matter that is not the subject of a tribute as provided for in Senate Rule 30A.

...

(c) Senate resolutions, which shall not require the concurrence of the House, and shall cover any purpose similar to a joint resolution, but relate solely to the Senate. ...

(d) Senate joint Memorials or Senate Memorials, which shall pertain to resolutions Memorializing the Congress of the United States on any matter, or to an expression of sentiment on the death of any person or persons who served as members of the General Assembly, present or

> former elected State officials, present or former justices of the Colorado Supreme Court, members of Congress, elected officials of other states or of the United States, or foreign dignitaries....

10.2 Concurrent Resolutions

10.2.1 General Information

Under Senate Rule No. 30 and House Rule No. 26, a proposed amendment to the state constitution, the question of holding a state constitutional convention, and whether to ratify an amendment to the U.S. Constitution are drafted as concurrent resolutions. Article XIX of the state constitution requires the General Assembly to submit these types of concurrent resolutions to the voters for approval.

Article XIX, section 2 of the state constitution also provides, in part: "But each general assembly shall have no power to propose amendments to more than six articles of this constitution."[1] The General Assembly also has the power to amend a proposed constitutional amendment passed at a prior session if the proposed amendment has not yet been submitted to a vote of the people.[2]

As discussed in chapter 5 of this manual, the provisions of Joint Rule No. 21 of the Senate and House apply to concurrent resolutions that propose constitutional amendments. Drafters must show new language in small capital letters and show repealed language in strike type.

Drafters should become familiar with the form of a concurrent resolution. For more examples, see section 10.2.4.6 of this chapter and Appendix A of this manual.

10.2.2 Single Subject Rule

In 1994, voters adopted a single-subject rule for titles of constitutional amendments. The single-subject requirement is contained in article XIX, section 2 of the state constitution. The same rules on single subject for drafting bill titles apply to drafting titles to constitutional amendments.

[1] The Office of Legislative Legal Services tracks the number of articles amended by proposed concurrent resolutions by each General Assembly.
[2] *In re Senate Concurrent Resolution No. 10*, 137 Colo. 491, 328 P.2d 103 (1958).

10.2.3 Frequently Asked Questions

10.2.3.1 Introduction Deadline

Concurrent resolutions must be requested by the 87th legislative day of session (usually around early April) and may not be introduced after the 90th legislative day without permission from the appropriate Committee on Delayed Bills.

10.2.3.2 Committees of Reference

Under House Rule 26 (b) and (c)(2) and Senate Rule 30 (a)(2) and (3), concurrent resolutions are treated like bills and assigned to one or more committees of reference.

10.2.3.3 Voting

In the General Assembly

Before a concurrent resolution that proposes an amendment to the state constitution is submitted to the people for a vote, it must pass by a two-thirds vote of all members of both the House and the Senate. The ratification of an amendment to the U.S. Constitution requires a two-thirds vote of the House but only a simple majority of the Senate.

Governor Does not Sign

A concurrent resolution is not presented to the Governor for signature.

When Do the People Vote on a Concurrent Resolution

A concurrent resolution that proposes amendments to the state constitution is delivered to the Secretary of State to be placed on the ballot at the next biennial regular general election, unless it relates to state matters arising under article X, section 20 of the state constitution (TABOR), in which case it can be referred at the odd-numbered year election.

Percentage of Colorado Voters Required to Pass Amendment to Colorado Constitution

For a concurrent resolution that only repeals language: A simple majority must approve.

For a concurrent resolution that adds or amends language: At least 55% of voters must approve.

10.2.4 Drafting Concurrent Resolutions

Note: Drafters have been asked to do a combined constitutional and statutory concurrent resolution. The Office can't do that. The fundamental problem is that a concurrent resolution has to be approved by two-thirds of each chamber and goes to the people for a vote, while a bill only

needs a majority vote and the governor has the right to veto it. There is no way to reconcile how to satisfy those conflicting requirements.

However, an initiative can do both.

10.2.4.1 Titles - Concurrent Resolution & Ballot

10.2.4.1.1 Language

The concurrent resolution title and ballot title:

- Should meet single-subject requirements and should accurately reflect the text of the proposed amendment; and
- Should not include citations to the constitutional provisions being amended in the concurrent resolution.

The title should begin:

> SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF COLORADO AN AMENDMENT TO THE COLORADO CONSTITUTION CONCERNING...

Proposed constitutional amendments are submitted to the "registered electors." Do not use "qualified electors" in the title of a concurrent resolution.

10.2.4.1.2 Title Format

The format of a concurrent resolution title and a ballot title differ slightly.

The concurrent resolution title is like a bill title in that it appears in SMALL CAPITAL LETTERS and **bold-faced type**. The ballot title should be in regular type; except that certain ballot titles must meet the requirements of article X, section 20 (3)(c) of the state constitution (TABOR), in which case the ballot title must appear in all capital letters. For further explanation of these types of TABOR questions, see Tabor Titles.

NonTABOR Concurrent Resolution Title - Example 1

> Concurrent Resolution Title:
>
> SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF COLORADO AN AMENDMENT TO THE COLORADO CONSTITUTION CONCERNING ALLOWING COLORADO LAWMAKERS TO PASS LAWS THAT PERMIT VICTIMS OF CHILDHOOD SEXUAL ABUSE TO BRING A CIVIL CLAIM FOR THE SEXUAL ABUSE REGARDLESS OF WHEN THE SEXUAL ABUSE OCCURRED.

Ballot Title:

SECTION 2. Each elector voting at the election may cast a vote either "Yes/For" or "No/Against" on the following ballot title: "Shall there be an amendment to the Colorado constitution allowing Colorado lawmakers to pass laws that permit victims of childhood sexual abuse to bring a civil claim for the sexual abuse regardless of when the sexual abuse occurred?"

NonTABOR Title - Example 2

Concurrent Resolution Title:

SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF COLORADO AN AMENDMENT TO THE COLORADO CONSTITUTION CONCERNING A PROHIBITION ON AN INDIVIDUAL BEING A STATE LEGISLATOR FOR A TERM OF OFFICE IMMEDIATELY FOLLOWING A TERM FOR WHICH THE INDIVIDUAL WAS APPOINTED TO FILL A VACANCY IN THE GENERAL ASSEMBLY FOR THAT OFFICE.

Ballot Title:

SECTION 2. Each elector voting at the election may cast a vote either "Yes/For" or "No/Against" on the following ballot title: "Shall there be an amendment to the Colorado constitution concerning a prohibition on an individual being a state legislator for a term of office immediately following a term for which the individual was appointed to fill a vacancy in the general assembly for that office?"

10.2.4.1.3 TABOR Titles

Certain ballot titles must meet the requirements specified in article X, section 20 (3)(c) of the state constitution. TABOR questions must begin with the phrase:

"SHALL (DISTRICT) TAXES BE INCREASED [FIRST, OR IF PHASED IN, FINAL, FULL FISCAL YEAR DOLLAR INCREASE] ANNUALLY...?"

OR

"SHALL (DISTRICT) DEBT BE INCREASED [PRINCIPAL AMOUNT], WITH A REPAYMENT COST OF [MAXIMUM TOTAL DISTRICT COST], ...?"

The remainder of the question should conform to the guidelines for drafting concurrent resolution ballot titles. For example: "SHALL STATE TAXES BE INCREASED BY $13,100,000 ANNUALLY BY AN AMENDMENT TO THE COLORADO CONSTITUTION CONCERNING...?" If a concurrent resolution contains this type of question, the concurrent resolution title will not match the ballot question as it does in other types of concurrent resolutions.

Drafters are asked to draft this type of language more often in bills than concurrent resolutions. If you are asked to draft this type of language in a concurrent resolution, see examples in SB16-210, SB17-303, HB17-1171, SB18-001, and HB19-1333, and, HB24-1349.

TABOR Ballot Title - Example

> From HB24-1349
>
> "SHALL STATE TAXES BE INCREASED BY $__ ANNUALLY FOR THE PURPOSE OF FUNDING CRIME VICTIM SERVICES, THE REDUCTION OF VIOLENCE, THE SAFE AND LAWFUL USE OF FIREARMS, AND THE ENHANCEMENT OF SCHOOL SAFETY BY LEVYING A TAX ON FIREARMS DEALERS, FIREARMS MANUFACTURERS, AND AMMUNITION VENDORS AT THE RATE OF 11% OF THE GROSS TAXABLE SALES FROM THE RETAIL SALE IN THIS STATE OF ANY FIREARM, FIREARM PRECURSOR PART, OR AMMUNITION, WITH THE STATE KEEPING AND SPENDING ALL OF THE NEW TAX REVENUE AS A VOTER-APPROVED REVENUE CHANGE?"

For further explanation of TABOR questions, see chapter 9 of this manual.

10.2.4.2 Resolution Summary

Like bills, which have bill summaries, concurrent resolutions have a resolution summary.

As a general rule, do not include citations to the state constitution in a resolution summary. This is a carryover from bill drafting, where the bill summary should not contain references to a specific statutory cite being amended, added, or repealed unless the reference contains helpful context for the reader.

TABOR should be cited as the "Taxpayer's Bill of Rights," but in some instances may be cited as "section 20 of article X of the state constitution (TABOR)."

10.2.4.3 Body of the Concurrent Resolution

Most concurrent resolutions have three sections, although there are a few exceptions, including:

- Concurrent resolutions dealing with amendments to the U.S. Constitution or state constitutional conventions; and
- Concurrent resolutions that are contingent on the passage of another concurrent resolution (see Appendix A of this manual for an example).

The three standard sections of a concurrent resolution are as follows:

> **SECTION 1.** Contains the paragraph that starts "At the election held on November (insert date & year), the secretary of state shall submit to the

registered electors of the state the ballot title set forth in section 2 for the following amendment to the state constitution:"

[The amended or added constitutional language follows].

SECTION 2. Contains the ballot title. The concurrent resolution title at the beginning of the bill (see and the ballot title in section 2 of the concurrent resolution should be identical; except that the concurrent resolution title begins with the phrase "Submitting to the registered electors of the state of Colorado" and ends in a period and the ballot title begins with the phrase "Shall there be" and ends with a question mark.

SECTION 3. Contains the result of the vote. The standard language for this paragraph is: Except as otherwise provided in section 1-40-123, Colorado Revised Statutes, if [a majority of / at least fifty-five percent of] the electors voting on the ballot title vote "Yes/For", then the amendment will become part of the state constitution.

10.2.4.3.1 Body Format

- **Don't Use WHEREAS**

  Unlike simple and joint resolutions and Memorials, do not use "WHEREAS" clauses after the enacting clause. For an example of a concurrent resolution that begins with a simple resolution, see HCR18-1002.

- **Don't Use PARNUM Codes**

  Do not use PARNUM codes in concurrent resolutions. Instead, type in hard numbers for the three sections in the resolutions. Why? Because concurrent resolutions are printed in the journals.

- **Internal References**

  If you are in the article you are referencing, use "this article #", e.g., section 20 of this article VI

  If you are outside of the article you are referencing, add "of this constitution", e.g., section 20 of article X of this constitution

  In general, use normal C.R.S style guidelines for citing internal references.

- **Take Care**

  When "cleaning up" the language in the state constitution.

10.2.4.3.2 Conforming Amendments

Conforming amendments in the Colorado Revised Statutes are prepared either:

- The same year as the concurrent resolution in a separate bill with an effective date contingent upon the approval by the people of the concurrent resolution; or
- In a separate bill the next legislative session after the people approve the concurrent resolution.

10.2.4.4 Amending Clauses

10.2.4.4.1 General Rules

A separate amending clause, similar to an amending clause in a bill, is required for each section that amends an article of the state constitution.

Amending clauses are not numbered like bill sections.

> **SECTION 1.** At the election held on November 3, 2020, the secretary of state shall submit to the registered electors of the state the ballot title set forth in section 2 for the following amendment to the state constitution:
>
> In the constitution of the state of Colorado, section 2 of article XVIII, **amend** (2) and (4) as follows:

10.2.4.4.2 Amending Clause Examples

See Appendix B of this manual for more examples.

10.2.4.4.2.1 Amend Subsection

> In the constitution of the state of Colorado, section 3.5 of article X, **amend** (1)(c) and (1.5) as follows:

10.2.4.4.2.2 Amend Section

> In the constitution of the state of Colorado, **amend** section 26 of article II as follows:

10.2.4.4.2.3 Amend & Add

> In the constitution of the state of Colorado, section 23 of article VI, **amend** (3)(a), (3)(e), (3)(f), (3)(g), and (3)(h); and **add** (3)(c.5) and 10 (3)(k) as follows:

10.2.4.4.2.4 Add Subsection

In the constitution of the state of Colorado, section 3 of article XXVII, **add** (3) as follows:

10.2.4.4.2.5 Add Section

In the constitution of the state of Colorado, **add** section 24 to article IV as follows:

10.2.4.4.2.6 Repeal

In the constitution of the state of Colorado, **repeal** section 31 of article II as follows:

10.2.4.4.2.7 Straight Repeal

In the constitution of the state of Colorado, **repeal** section 2 (4.5), (8.5), (14.4), and (14.6) and sections 6 (2), 15, 16, and 17 of article XXVIII.

10.2.4.4.2.8 Repeal and Reenact

From SCR 18-001:

In the constitution of the state of Colorado, **repeal and reenact, with amendments,** section 1 of article IX as follows:

10.2.4.4.2.9 Amending Clause + Amended Text

From SCR17-002:

In the constitution of the state of Colorado, section 20 of article X, **amend** (8)(a) as follows:

Section 20. The Taxpayer's Bill of Rights. (8) Revenue limits. (a) ~~New or increased transfer tax rates on real property are prohibited.~~ No new state real property tax or local district income tax shall be imposed. Neither an income tax rate increase nor a new state definition of taxable income shall apply before the next tax year. Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at onerate, excluding refund tax credits or voter-approved tax credits, with no added tax or surcharge.

In the constitution of the state of Colorado, article X, **add** section 22 as follows:

Section 22. Real estate transfertax to fund affordable housing - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

10.2.4.5 Section 3

Beginning with the general election in 2018, the language in section 3 of a concurrent resolution varies depending on the content of the concurrent resolution. A concurrent resolution that only repeals language is subject to approval by a majority of the electors voting on the ballot title, but a concurrent resolution that adds or amends language must be approved by at least 55% of the electors voting on the ballot title.

For a concurrent resolution that **only repeals language**, section 3 will read: "...if a majority of the electors voting on the ballot title...".

For a concurrent resolution that **adds or amends language**, section 3 must read: "...if at least fifty-five percent of the electors voting on the ballot title...".

10.2.4.6 Examples

10.2.4.6.1 Concurrent Resolution - Examples

Below are links to examples of concurrent resolutions from the 2018-2024 legislative sessions:

SCR18-004: Congressional Redistricting

SCR20-001: Repeal Property Tax Assessment Rates

HCR22-1001: Statutory Initiative Petition Signature Requirements

HCR22-1002: Eliminate Requirement that Bills Be Read at Length

HCR22-1006: Charitable Gaming Constitutional Amendment

HCR24-1002: Constitutional Bail Exception First Degree Murder

HCR24-1003: School Choice in K-12 Education System

HCR24-1006: Property Tax Revenue Growth Limit

SCR24-002: Modify Constitutional Election Deadlines

SCR24-003: Protecting the Freedom to Marry

10.2.4.6.2 Bill Contingent on Passage of Concurrent Resolution - Examples

In 2010, SB10-141 only took effect if House Concurrent Resolution 09-1003 was approved by the people and became law.

In 2020, SB20-223 required the passage of SCR 20-001. Below is the effective date of SB 20-223:

SECTION 5. Effective date. (1) Except as otherwise provided in subsection (2) of this section, this act takes effect upon passage.

(2) Sections 1 to 4 of this act take effect only if, at the November 2020 statewide election, a majority of voters approve the ballot issue referred in accordance with section 2 of Senate Concurrent Resolution 20-001. If the voters approve the ballot issue, then sections 1 to 4 of this act take effect on the date of the governor's proclamation or January 1, 2021, whichever is later.

10.2.4.7 Amending Concurrent Resolutions

When amending a current resolution, use the same instructions that are used in bills, and replace the word "bill" with the words "concurrent resolution."

Amend printed concurrent resolution ...

Amend reengrossed concurrent resolution ...

Amend revised concurrent resolution ...

10.2.4.7.1 Concurrent Resolution Amendment Examples

10.2.4.7.1.1 Committee Amendment

House Appropriations Committee amendment to HCR 21-1002

HCR1002 L.002

HOUSE COMMITTEE OF REFERENCE AMENDMENT
Committee on Appropriations.

HCR21-1002 be amended as follows:

Amend printed concurrent resolution, page 3, strike lines 3 and 4 and substitute "UNDER 10 U.S.C. SEC. 1126 OR ANY SUCCESSOR FEDERAL STATUTE, AS MAY BE AMENDED, AND APPLICABLE FEDERAL REGULATIONS.".

10.2.4.7.1.2 Amend Reengrossed Concurrent Resolution

HCR1001_L.006 Amendment No. _____

HCR23-1001
SENATE FLOOR AMENDMENT

Second Reading BY SENATOR Gardner

Amend the Judiciary Committee Report, dated April 26, 2023, page 1, strike lines 1 through 3.

Page 1 of the report, line 4, strike "Page" and substitute "Amend rengrossed resolution, page".

Amend reengrossed concurrent resolution, page 3, line 14, strike "court;" and substitute "court, FROM AMONG THREE NOMINEES FOR EACH VACANCY SUBMITTED TO THE SUPREME COURT BY THE CHIEF JUDGES OF THE STATE;".

** *** ** *** **

10.2.4.7.1.3 Amend Revised Concurrent Resolution

SCR001_L.005 Amendment No. _____

SCR20-001

HOUSE FLOOR AMENDMENT

Third Reading BY REPRESENTATIVE Gray

Amend revised concurrent resolution, page 4, strike lines 17 through 26 and substitute "increasing property tax rates, to help preserve funding for local districts that provide fire protection, police, ambulance, hospital, kindergarten through twelfth grade education, and other services, and to avoid automatic mill levy increases, shall there be an amendment to the Colorado constitution to repeal the requirement that the general assembly periodically change the residential assessment rate in order to maintain the statewide proportion of residential property as compared to all other taxable property valued for property tax purposes and repeal the nonresidential property tax assessment rate of twenty-nine percent?"".

10.3 Joint and Simple Resolutions and Memorials

Examples of joint and simple resolutions are found in Appendix A of this manual.

In general, unless resolutions and memorials concern the business of either chamber, they must be requested by the 87th legislative day of session (usually in early April) and may not be introduced after the 90th legislative day without permission from the appropriate Committee on Delayed Bills.

The introduction deadlines for each resolution and memorial can be found in CLICS. A member must obtain delayed status to introduce a resolution or memorial after that date.

Note: The introduction date listed in CLICS for resolutions and memorials is the last day a member can introduce the resolution or memorial without delayed bill paperwork, not necessarily the date when the member wants the resolution or memorial heard on the floor. For instance, the 2025 introduction deadline in CLICS for resolutions is April 5, 2025. However, when

a member requests, as a member does every year, to designate January 25th as "Colorado 4-H Day," they will need the resolution drafted, edited, revised, and delivered for introduction far before the official deadline in CLICS.

10.3.1 Resolutions

10.3.1.1 Joint Resolutions

Senate and House joint resolutions:

- Pertain to the business of both chambers
- Express the will of both chambers on any matter not mentioned in tributes
- Establish joint committees

The typical joint or simple resolution does not have the effect of law, and the General Assembly cannot do by resolution that which can only be done by law. Think of joint and simple resolutions as being like a letter to Santa -- they are hoped-for sentiments that often do not come true. For example, article V, section 33 of the state constitution provides that "No money shall be paid out of the treasury except upon appropriations made by law...."

Thus, the General Assembly cannot appropriate money in a resolution or memorial.

A joint resolution may pertain to the business transactions of the two chambers, such as:

- The joint resolution adopted at the beginning of each session to notify the Governor that the chambers are ready to conduct business; and
- The joint resolution often adopted at the end of each session to adjourn the General Assembly *sine die*, that is, to adjourn without appointing a day to appear or assemble again.

The House can initiate a joint resolution urging congressional action: See HR22-1004.

The statutes require some joint resolutions to go to the Governor for approval or disapproval. Those joint resolutions, if signed by the Governor, do have the force and effect of law. An example is the annual resolution on the water pollution control project eligibility list, which is required by section 37-95-107.6 (4)(b), C.R.S., to be approved by a joint resolution signed by the Governor. For the 2024 resolution approving water project revolving fund eligibility lists, see SJR24-004.

The House and Senate may use a joint resolution to submit interrogatories to the Colorado Supreme Court, pursuant to article VI, section 3 of the state constitution, for an opinion on a bill's

constitutionality. However, either of the chambers may also use a simple resolution for this purpose.

For examples of joint resolutions requesting interrogatories, see:

- (Calendar Days) HJR20-1006 Concerning a request to the Supreme Court of the State of Colorado to render its opinion upon a question regarding article V, section 7 of the state constitution.
- (Mill Levies) SJR21-006 Concerning a request to the Supreme Court of the state of Colorado to render its opinion upon a question regarding HB21-1164.
- (Redistricting Commissions) HJR21-1008 Concerning a request to the Supreme Court of the state of Colorado to render its opinion upon questions regarding article V, sections 44 to 48.4 of the state constitution.

10.3.1.2 Simple Resolutions

- House resolutions pertain only to matters involving the House
- Senate resolutions pertain only to matters involving the Senate

A simple resolution, such as a House resolution or a Senate resolution, is only heard in the one chamber, and it must relate solely to the chamber in which it is introduced.

When the House wishes to change the rules of the House, they need to pass a resolution.

For more, see section 10.4 of this chapter.

10.3.2 Memorials

Senate joint memorials and Senate memorials may:

- Memorialize the Congress of the United States on any matter
  - Only the Senate can initiate a joint memorial to Congress or a memorial to Congress
- Express sentiment on the death of:
  - Individuals who served as members of the General Assembly;
  - Present or former justices of the Colorado supreme court;
  - Members of Congress; or
  - Elected officials of other states or of the United States or foreign dignitaries.

House joint memorials or House memorials ONLY deal with:

- The expression of sentiment on the death of persons who served as members of the House.

All other matters not mentioned in the rules of the House or Senate are done as tributes in the respective chamber. See section 10.5 of this chapter for more information.

10.3.3 Vote Requirements

Joint resolutions, resolutions, joint memorials, and memorials require a majority vote for passage.

10.3.4 Committees of Reference

Generally, memorials that concern a deceased member of the General Assembly, past or current, are not assigned to a committee of reference. Senate memorials memorializing Congress, Senate joint resolutions, Senate resolutions, House resolutions, and House joint resolutions may be assigned to a committee of reference at the discretion of the President of the Senate or the Speaker of the House.

10.3.5 Limits on Resolutions and Memorials

Pursuant to House Rule 26, a Representative may not introduce more than two House resolutions or House joint resolutions (total) during a regular or special session, except with permission from the House Committee on Delayed Bills. The House does not limit the number of Joint Memorials or Memorials a Representative may introduce.

Similarly, under Senate Rule 30, a Senator may not introduce more than three Senate joint resolutions or Senate resolutions (total) during a regular or special session, except with permission from the Senate Committee on Delayed Bills. The Senate does not limit the number of joint memorials or memorials that a Senator may introduce.

House Rule No. 26 (a)(3.5)(A) limits the number of resolutions in the House that recognize or commemorate an individual, organization, or group for a significant event or accomplishment to:

- A combination of up to six House resolutions and House joint resolutions approved by the Speaker after consultation with the majority leader; and
- A combination of up to four House resolutions and House joint resolutions approved by the Speaker after consultation with the minority leader.

If a member requests a resolution and it is later in session, ask the member if they have the approval of the speaker and majority or minority leader. This approval is given in writing, and the

sponsor should have electronic permission or a sign delayed bill form before the drafter begins work on the resolution.

10.3.6 Drafting Resolutions and Memorials

In preparing a resolution, particularly one that expresses the will and sentiment of the General Assembly, the drafter should attempt to obtain from the sponsor, preferably in writing, definite ideas that express the sentiments of the sponsor.

10.3.6.1 Titles

- Resolution titles begin: "Concerning ..."
    - Concerning recognizing February of 2024 as Black History Month.
    - Concerning recognition and remembrance of Colorado military veterans who served in the Vietnam War.
- Memorial titles begin "Memorializing ..."
    - (House Memorial) Memorializing former Representative Alice Borodkin.
    - (Senate Joint Memorial) Memorializing former Representative and Senator Jim Dyer.
    - (Senate Memorial) Memorializing Congress to authorize forwarding funding to make a one-time appropriation to the Bureau of Indian Education Higher Education Grant Program.

10.3.6.2 No Summary

Unlike bills, which have bill summaries, and concurrent resolutions, which have resolution summaries, simple and joint resolutions and memorials do not have summaries.

10.3.6.3 Whereas Clauses

- Each paragraph that sets forth the reasons for the resolution begins: "WHEREAS,"

    WHEREAS, Each year, hundreds of thousands of families are faced with what President Ronald Reagan called "the stark terror of a unique tragedy"—a missing family member; and

    WHEREAS, Every 40 seconds, someone goes missing in America; approximately 2,300 Americans are reported missing every day, and there are as

many as 90,000 active missing persons cases in the United States at any given time; and

- The word that follows "WHEREAS," should always be initial-capped
- Each "WHEREAS" clause must end "; and," even if it has two sentences (although do your best to make it one long sentence)
- Each successive "WHEREAS" clause should build logically to the resolution of the General Assembly in the resolving clause
- If the sponsor or stakeholder wants paragraphs to be ordered in a certain way, accede to their requests
- The last "WHEREAS" clause immediately before the resolving clause must end "now, therefore,"

> WHEREAS, Long after the battles have ended, as our stars and stripes of liberty fly, the families who have at home a folded flag and an empty seat at the table deserve our respect and our support; now, therefore,
>
> *Be It Resolved ...*

10.3.6.4 Resolving Clauses

The resolution template will automatically add the resolving clause to your resolution. Always review it to make sure it is correct.

10.3.6.4.1 SJR Resolving Clause

> *Be It Resolved by the Senate of the Seventy-fourth General Assembly of the State of Colorado, the House of Representatives concurring herein:*

10.3.6.4.2 SR Resolving Clause

> *Be It Resolved by the Senate of the Seventy-fourth General Assembly of the State of Colorado:*

10.3.6.4.3 HJR Resolving Clause

> *Be It Resolved by the House of Representatives of the Seventy-fourth General Assembly of the State of Colorado, the Senate concurring herein:*

10.3.6.4.4 HR Resolving Clause

> *Be It Resolved by the House of Representatives of the Seventy-fourth General Assembly of the State of Colorado:*

10.3.6.5 Capitalization

Different capitalization rules apply for simple resolutions and memorials than for bills and concurrent resolutions. In general, the person drafting the resolution has more freedom to capitalize words that are not usually capitalized in the statutes. The key is to be consistent in the words you capitalize. The following words are often capitalized in simple resolutions and memorials, among many others:

- General Assembly
- House or Senate Committee names
- Colorado Congressional Delegation

Note: When amending House or Senate rules, be sure to follow the capitalization in the rules you are amending, and be sure to follow standard OLLS capitalization rules in concurrent resolutions.

For instructions on amending resolutions and Memorials see Amending Resolutions and Appendix C of this manual.

10.3.6.6 Numbers

- Use your discretion and personal preference when deciding whether to spell out numbers or use digits, just do so consistently through the resolution or memorial.
- Many editors and drafters outside of the General Assembly prefer to spell out numbers one through nine and to use digits for numbers 10 or higher.
- If the resolution includes scores of some kind, use digits.
- Use standard drafting practices when referencing fiscal years, i.e., "state fiscal year 2001-02."

10.3.7 Amending Resolutions and Memorials

House Resolution / Memorial

If in House

- Amend printed [joint] resolution
- Amend printed [joint] memorial

If in Senate

- Amend engrossed [joint]resolution

- Amend engrossed [joint] memorial

Senate Resolution / Memorial

If in Senate

- Amend printed [joint] resolution
- Amend printed [joint] memorial

If in House

- Amend engrossed [joint] resolution
- Amend engrossed [joint] memorial

10.3.7.1 Example Amend SJR in Senate

SJR013_L.001 Amendment No. _____

SJR20-013

SENATE FLOOR AMENDMENT

BY SENATOR Coram

Amend printed resolution, page 2, strike line 23 and substitute "in Operation Freedom's Sentinel; and

WHEREAS, On August 11, 2019, Gunnery Sgt. Scott A. Koppenhafer, of Mancos, Colorado, a member of the United States Marine Corps assigned to 2nd Marine Raider Battalion, Marine Forces Special Operations Command, based at Camp Lejeune, North Carolina, made the ultimate sacrifice while serving his country in Operation Inherent Resolve; now, therefore,".

** *** ** *** **

10.3.7.2 Example Amend HJR in Senate

HJR1003_L.001 Amendment No. _____

HJR21-1003

SENATE FLOOR AMENDMENT

BY SENATOR Fenberg

Amend engrossed resolution, page 1, line 7, strike "one member" and substitute "two members".

Page 1, line 8, strike "one member" and substitute "two members".

** *** ** *** **

10.4 Changing the Rules of General Assembly

House, Senate, and Joint Rules are changed by resolution. Resolutions are not subject to the single-subject requirement of article V, section 21 of the state constitution.

The rules are available on the General Assembly's website and are also available in HCL Notes in the House and Senate Rules database on Alamosa.

Be sure that the form and formatting of the rule match the most recent version of the rule (which may not be reflected in the Colorado Legislative Rules booklet). The resolution should be proofed against the most recent version of the rule being amended.

10.4.1 Example 1

In 2024, the General Assembly adopted SJR24-001, which updated the bill deadline schedule.

Here's a snippet of the first page:

SENATE JOINT RESOLUTION 24-001

CONCERNING CHANGES TO THE DEADLINE SCHEDULE.

Be It Resolved by the Senate of the Seventy-fourth General Assembly of the State of Colorado, the House of Representatives concurring herein:

That in the Joint Rules of the Senate and House of Representatives, Joint Rule No. 23, **amend** (a)(1) as follows:

23. DEADLINE SCHEDULE

(a) (1) ***Deadline schedule.*** For the purposes of organizing the legislative session, the schedule for the enactment of legislation shall be as follows: ...

10.4.2 Example 2

In 2022, the Senate adopted SR22-004.

Title:

> CONCERNING THE RULES OF THE SENATE, AND, IN CONNECTION THEREWITH, MAKING THE TEMPORARY RULES OF THE SENATE OF THE SEVENTY-THIRD GENERAL ASSEMBLY PERMANENT, MAKING CHANGES TO THE RULES OF THE SENATE AFFECTING THE READING OF BILLS AT LENGTH AND THE READING OF THE SENATE JOURNAL, AND MODIFYING THE ETHICS COMPLAINT PROCEDURES.

Snippet from the first page:

> That the temporary Rules of the Senate of the Seventy-third General Assembly be adopted as the permanent Rules of the Senate for the remainder of the second regular session of the Seventy-third General Assembly.
>
> That in the Rules of the Senate, **amend** Rule No. 11 as follows:
>
> **11. Reading of Bills**
>
> (a) Unless a member ~~shall request the reading of a bill in full~~ REQUESTS THAT A BILL BE READ AT LENGTH when the bill is being considered by the committee of the whole or on third and final reading, it shall be read by title only, and the unanimous consent of the members present to dispense with the reading of the bill ~~in full~~ AT LENGTH shall be presumed.
>
> (b) IF A MEMBER REQUESTS THAT A BILL BE READ AT LENGTH WHEN THE BILL IS BEING CONSIDERED BY THE COMMITTEE OF THE WHOLE...

Snippet from the last page (note that neither a safety clause nor an act subject to petition clause is needed)

> **9. Debate**
>
> (a) The following questions shall be decided upon without debate; but any Senator making such a motion shall be given three minutes to explain the motion:
>
> (10) SUSPEND THE READING OF A BILL AT LENGTH PURSUANT TO RULE NO. 11 (d).

10.4.3 More Examples

HJR20-1010 Concerning a change to the Joint Rules of the Senate and House of Representatives regarding the number of bills an interim committee may request for drafting.

HR20-1002 Concerning the addition of a House rule authorizing the Speaker of the House of Representatives to promulgate regulations for remote participation in legislative proceedings of the House during a declared public health disaster emergency.

SR23-002 Concerning changes to the Rules of the Senate regarding committees of reference.

10.5 Tributes

A tribute is meant for congratulatory purposes. Since it does not need to be adopted by the House or Senate, it does not require introduction or floor action. Because of this, leadership has encouraged members to use tributes, rather than joint resolutions or memorials, to congratulate sports teams, greet prominent visitors to the state, or honor exceptional people or groups.

Drafters in the Office do not draft tributes. If a Senator requests a tribute, refer the Senator to the Secretary of the Senate. If a Representative requests a tribute, refer the Representative to the Chief Clerk of the House of Representatives. The staff of each chamber's enrolling room write the tributes.

House Rule 26A and Senate Rule 30A govern tributes. It is helpful to know the rules governing tributes, as you can use them to explain to a member why they should request a tribute instead of a resolution or memorial. Senate Rule 30A, which reads very similar to House Rule 26A, states:

30A. Tributes

(a) Tributes are non-legislative actions that do not require introduction or floor action.

(b) Tributes issued by the secretary of the Senate shall be of the following classes:

(1) Senate joint tributes or Senate tributes, which shall:

(A) Offer congratulations for significant public achievements;

(B) Recognize meritorious individual achievement;

(C) Express appreciation for service to the state or the General Assembly;

(C.5) Recognize individuals' service in the military;

(D) Extend greetings to prominent visitors to the state.

(2) Senate joint memorial tributes or Senate memorial tributes, which shall express sentiment on the death of a person who has not served as a member of the General Assembly.

(c) The secretary of the Senate shall not issue:

(1) A Senate tribute or memorial tribute unless the Senator requesting the issuance of such tribute has obtained the permission of the President;

(2) A Senate joint tribute or joint memorial tribute unless the Senator requesting the issuance of such tribute has obtained the permission of the President and a Representative has obtained the permission of the Speaker of the House.

(3) A Senate joint tribute or Senate tribute if, prior to the issuance of the tribute, at least five members of the Senate request that the tribute not be issued.

(d) A list of all tributes requested in the Senate shall be made available for inspection in the office of the Secretary of the Senate.

(e) All tributes issued by the Senate shall be printed in the journal by title on the day following the issuance.

Chapter 11: The Initiative Process

11.1 Constitutional and Statutory Requirements

The Office is required by both the state constitution and statute to be involved in the initiative process. The goal of this chapter is to provide an overview of the initiative process and guidance on drafting review and comment memos, conducting review and comment hearings, and preparing draft titles for the title board. Additional materials and examples can be found in Appendix G of this manual.

11.1.1 The Constitutional Requirements

Under article V, section 1 (1) of the Colorado Constitution, the legislative power of the state is vested in the Colorado General Assembly. However, "the people **reserve** to themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the general assembly...." (Emphasis added). The power reserved by the people to propose laws is called the power of the initiative. Under the constitution, any person who follows the procedural steps outlined in the constitution and the statutes may propose an initiative. An initiative may amend either the constitution or the statutes.

To be placed on the ballot, a petition for an initiative, whether amending the constitution or the statutes, must be signed by registered electors in an amount equal to at least five percent of the total number of votes cast for secretary of state at the previous general election. Additionally, for an initiated constitutional amendment, the petition must be signed by registered electors who reside in each state senate district in an amount equal to at least two percent of the registered electors in the senate district. The governor's veto power does not extend to an initiated measure.

The constitution requires that the original draft of the text of the proposed constitutional amendment or initiated law must be submitted to the legislative research and drafting offices of the Colorado General Assembly for review and comment. *See* Colo. Const. art. V, § 1 (5). The Legislative Council accepts these on behalf of both offices. The two staff offices are required to render their comments to the proponents of the measure at a meeting held two weeks after the petition is filed, unless the measure is withdrawn. This meeting is open to the public and is called a "review and comment" meeting or hearing. The constitution also imposes a single-subject requirement upon an initiated measure that is similar to the single subject requirement for bills, as discussed in Chapter 2 of this manual titled "Drafting a Bill."

11.1.2 Statutory Requirements and Legislative Rules

Article 40 of title 1, C.R.S., contains the statutory requirements governing the initiative and referendum process. Staff members working on an initiative review and comment memo should be familiar with sections 1-40-102, 1-40-104, 1-40-105, 1-40-105.5, 1-40-106, 1-40-106.5, and 1-40-107, C.R.S. The Legislative Council has also adopted rules governing initiatives filed for review and comment. Staff should also be familiar with these rules, which are included in Appendix G.6 of this manual and are also available on the Legislative Council website. In addition, there is extensive Colorado case law on the initiative process. A summary of relevant cases is included in Appendix G.5 of this manual.

11.1.2.1 Review and Comment Process

Section 1-40-105, C.R.S., outlines the statutory requirements for filing an initiative and the review and comment process. Subsection (1) states that proponents are encouraged to write drafts in "plain, nontechnical language and in a clear and coherent manner using words with common and everyday meaning that are understandable to the average reader." Subsection (1) also indicates that where appropriate, the staff comments shall "contain suggested editorial changes to promote compliance with the plain language provisions" of the law. While one of the purposes of the review and comment meeting is to assist the proponents in refining the language, staff members need to remember that it is up to the proponents whether or not they wish to make changes based on staff suggestions. The constitution states that "[n]either the general assembly nor its committees or agencies shall have any power to require the amendment, modification, or other alteration of the text of any such proposed measure..." *See* Colo. Const. art. V, § 1 (5).

Legislative Council Initiative Rule 11 allows a proponent to resubmit a corrected petition to replace an original or amended petition that has an obvious and plain error, such as a grammatical, punctuation, or spelling error. A corrected petition filed for an original petition will have a review and comment meeting at the time and day that was scheduled for the original petition. A corrected petition filed for an amended petition that the proponents have not asked to be treated as an amended petition will have a review and comment meeting at the time and day that was scheduled for the amended petition unless the directors of the Office of Legislative Legal Services and the Legislative Council Staff determine that legislative staff have no additional questions on the corrected petition. In both of these situations, the corrected petition is treated as a substitute for what was filed. Corrected petitions are not an option after a review and comment meeting has been held but before the measure is filed with the secretary of state.

Sometimes a petition is filed as a corrected petition, but upon review, the staff determines that it is an amended petition because it contains substantive changes. In that circumstance, it is treated as a new submission, and a new review and comment meeting is scheduled two weeks from the filing date. Sometimes the proponents file an amended petition to replace an original or amended petition before the review and comment meeting set for the original or earlier

amended petition has occurred. In that circumstance, a new review and comment meeting is scheduled two weeks from the filing of the most recently filed amended petition.

Because both designated representatives are required to attend all the review and comment meetings on a measure, the only time the two offices will incorporate prior questions and responses from a previous review and comment memorandum is if **both** designated representatives are the same from one initiative to the next. If there are one or two new proponents for a measure that has previously had a review and comment hearing, the two offices will treat it as a new submitted measure and will prepare a full review and comment memo. *See* § 1-40-105 (1.5), C.R.S.

After the review and comment meeting, but before the measure is submitted to the secretary of state, proponents may amend the petition in response to the comments. If any substantial amendment is made to the petition, other than an amendment in direct response to the comments, an amended petition must be resubmitted for another review and comment meeting. Another review and comment meeting is scheduled two weeks after the date of filing of the amended petition. If the directors of the Legislative Council Staff and the Office of Legislative Legal Services determine that they have no additional comments on the amended petition, the directors must inform the proponents in writing as soon as practicable, but no later than 72 hours after the amended petition is filed. *See* § 1-40-105 (2), C.R.S., and Legislative Council Initiative Rule 12.

11.1.2.1 Title Board Process

After the review and comment meeting stage is concluded, the proponents must submit their final draft text to the office of the secretary of state for referral to the title board for a public hearing. The title board consists of the secretary of state, the attorney general, and the director of the Office of Legislative Legal Services or their designees. The secretary of state convenes the title board on the first and third Wednesdays of each month to "designate and fix a proper fair title" for each proposed law or constitutional amendment. *See* § 1-40-106 (1), C.R.S. The Office staff member prepares a draft title and submission clause for the title board to consider.

When the title board conducts a public hearing to set or fix the title, the board first determines whether the measure has a single subject. If the board determines that the measure has a single subject, the board will fix a title for the measure. If the board determines that the measure does not have a single subject, the board will not fix a title for the measure. The board also must consider whether the proposed ballot title and question would cause public confusion about whether the voter is voting for or against the measure. *See* § 1-40-106 (3)(b), C.R.S.

The ballot question consists of the title set by the board, which is written in the form of a question that can be answered yes/for (to vote in favor of the proposed law or constitutional amendment) or no/against (to vote against the proposed law or constitutional amendment).

11.2 Initiative Process

11.2.1 Drafting a Review and Comment Memo

As soon as an initiative is filed, the Legislative Council Staff schedules a meeting for the initiative on a date two weeks after the petition is filed. Under the rules, the two-week time period is mandatory, even if compliance with the two-week time period will cause the proponents to miss the last title board meeting in April for setting titles for the upcoming election. The measure will be assigned to both an attorney from the Office and a staff member from the Legislative Council Staff. Both staff members are jointly responsible for preparing the review and comment memo. The Office staff member should consult with the Legislative Council Staff prior to drafting the memo and ask the staff person to review the draft for suggestions or comments.

The Office staff member should create the review and comment memo using the form from the MS Word Templates folder that is available on his or her desktop, and save the document at S:\\PUBLIC\Ballot\(year) Rev & Comment Memos. The memo must be edited by a legislative editor and reviewed by a designated senior member of the Office prior to distribution to the proponents. Prior to the review and comment meeting, the review and comment memo is confidential and cannot be released to anyone other than the proponents.

The purpose of the review and comment process is to provide comments intended to aid the proponents in determining the language of the proposal and to avail the public of the contents of the proposal. The memo contains standard introductory paragraphs about the review and comment process, a description of the purposes of the proposed measure, substantive comments and questions, and technical comments.

In addition to the standard introductory language, there are several alternative introductory paragraphs included in the review and comment memo template that address whether there are other related initiatives being discussed at the same meeting or that were previously discussed at a meeting. A separate memo should be prepared for each initiative, instead of combining related initiatives into a single memo.

The purposes section should describe and summarize in plain, objective language the major purposes of the measure. Do not include arguments for or against the measure. The purposes section is an opportunity to make sure that the staff offices and the public understand the big picture of the initiative. In stating the major purposes, the staff is encouraged to paraphrase the language from the initiative and to use the staff's own words in describing the most important elements of the proposed initiative. This will help foster a better understanding of the proponents' intentions while potentially exposing any misunderstandings based on differences in interpretation.

The next portion of the memo contains substantive questions in which the staff points out policy issues, raises questions about how the language in the measure might be interpreted, offers suggestions for writing the measure in plain English, and makes suggestions regarding how to clarify ambiguous portions of the measure. While each measure generates its own unique set of questions, common issues to raise are issues of interpretation of language, the need for definitions, whether the measure might be inconsistent with or in conflict with other statutes or constitutional provisions, and what is the single subject of the measure. A few frequently used questions are included in the review and comment memo template, and the Office staff member should keep or delete the questions as appropriate. Any foundation or background information for the comment or question should be set forth before the actual question is asked.

Keep in mind that open-ended questions promote active discussion of the measure, compared to those that merely elicit a yes or no answer, although the latter type of question may be useful for clearly establishing a proponent's intent. Staff should avoid being too legalistic or using legislative jargon that would be unfamiliar to the proponents or the public. The following are examples of how a question may be framed:

- "When is the tax levied? Would the proponents consider clarifying this point?"
- "Do you intend to require the department to send the notice to all homeowners?"
- "Are candidates for federal office included in the proposed initiative?"
- "Why do you exclude 'social media' from the definition of 'mass market advertising'?"

Substantively, the staff member should also consider whether the measure is affected by or could be subject to the provisions of article X, section 20 of the Colorado Constitution, i.e., "TABOR." For example, the staff member should consider whether anything in the measure would have the effect of increasing or decreasing revenues to the state. If so, questions should be raised about how the measure is affected by TABOR or whether the proponents intend for the measure to be subject to or exempt from TABOR limitations on revenue. The staff member may need to consult with others in the Office regarding TABOR implications.

The final portion of the memo is headed "Technical Comments." Technical comments include such things as the lack of or errors in amending clauses for the measure, the use of small caps and to indicate changes in the law, issues of grammar, uniform numbering, or placement of the measure in the constitution or the statutes. Some frequently used comments are included in the review and comment memo template, and the Office staff member should keep or delete the questions as appropriate. The technical comments will be read aloud at the public meeting only if the proponents request so.

See Appendix G.8 of this manual for "Initiatives - Standard Language for Review and Comment Memos", which includes examples of substantive questions and technical comments to consider,

technical comments that are unnecessary, and questions to ask when an initiative is only an idea with no legal effect, e.g., a statement that "Peace is possible."

After the memo has been reviewed and finalized internally, the memo is then made available to the Legislative Council Staff to distribute to the proponents. A review and comment memo must be sent to the proponents as soon as possible but no later than 48 hours before the meeting date. Legislative staff need to allow sufficient time to prepare and finalize a review and comment memo, including time for review by a designated senior member of the Office, to comply with this 48 hour deadline.

See Appendix G.2 of this manual for the top twelve things to avoid in initiative review and comment memos, an example of an initiative and a review and comment memo, standard language for review and comment memos, and the Legislative Council Initiative Rules.

11.2.2 Conducting a Review and Comment Meeting

The Office staff member and Legislative Council Staff member assigned to prepare the memo are also responsible for conducting the review and comment meeting with the designated representatives of the proponents. This meeting is broadcast live and audio recorded. Certain things should be stated for the record at the outset: That this is a meeting on initiative number __ on __ topic for the purpose of providing review and comments to the proponents; the name of each staff member representing the offices; and the names of the proponents at the table. It should be stated that the meeting is being recorded and that the purpose of the meeting is to provide comments and questions to the proponents to assist the proponents in refining the language of the measure and to aid the public in understanding the intent of the measure.

Section 1-40-105 (1.5), C.R.S., requires both designated representatives to appear at any review and comment meeting. This requirement does not mean that the representatives cannot be represented by counsel at the meeting, nor does it require that they actively participate in the meeting. If both designated representatives do not attend the meeting, the measure is considered withdrawn by the proponents. If only one of the two representatives attends the meeting, the petition is deemed to be automatically resubmitted unless the designated representative who is present objects to the automatic resubmission. No later than five business days after the resubmission, staff is required to conduct the review and comment meeting. If both designated representatives fail to attend the meeting or if the designated representative who is present objects to the automatic resubmission, the proponents will have to restart the process by filing a new initiative.

After the preliminary comments are made, the staff reads the numbered purposes. The staff should give the proponents an opportunity to comment as to whether the purposes, as set forth in the memo, are a fair statement of the purposes or intent of the measure.

After the purposes have been discussed, the staff reads the numbered questions and comments, one by one, into the record and allows the proponents to respond to the questions or comments at the end of each one. The proponents may choose to respond or not respond to the questions. Proponents may submit written responses to the questions. These written responses should be added to the written record of the meeting. While the staff should try to answer questions that a proponent might raise in response to a question in the memo, the staff should avoid writing the measure for the proponents. It is often helpful to refer proponents to standard language. If a question in a series has been skipped by the proponent, the staff should repeat the question to elicit a response. Sometimes it is helpful to ask an unscripted follow-up question in order to clarify a proponent's previous response.

If the review and comment hearing includes multiple initiatives at the same meeting, the staff should create a record of the number of initiatives involving similar subjects and differentiate between the different initiatives. After the hearing for the first submission in a series of submissions, the general introduction can be skipped and the hearing may focus on the particular initiative being discussed and the differences between the initiative proposal and ones that have already been discussed. Also, the staff member may be able to point out technical comments without reading them aloud and then give the proponents the opportunity to ask questions about the comments.

At the conclusion of the meeting, the staff should ask the proponents if they have anything further they would like to add. While the meeting is open to the public, testimony from the public is not taken.

The role of the staff in presenting questions and conducting a meeting is to provide comments and questions about the measure, not to draft or redraft the initiative for the proponents. The staff needs to avoid making positive or negative comments about the measure, appearing to have an opinion about the merits or deficiencies of the proposal, or influencing the measure in any way.

After the meeting, the proponents may submit the measure without changes to the secretary of state's office or they may make non-substantive revisions to the measure in response to the comments and submit the amended measure to the secretary of state's office. Often, proponents will revise the measure and resubmit it for a second or subsequent review and comment meeting. Staff should start with the appropriate language from the review and comment memo template, revise the memo accordingly, and avoid repeating questions that have previously been asked and answered. As demonstrated in the review and comment memo template, the memo should indicate the earlier versions by number and date of previous meetings; state that the comments and questions are limited so as not to duplicate earlier comments and questions unless necessary to fully address the issues in the revised measure; and state that the comments and questions that have not been addressed by changes in the proposal continue to be relevant and are incorporated by reference in the memo.

11.2.3 Drafting the Titles for the Title Board

Once the proponents have submitted final language to the secretary of state's office, the measure will be scheduled for a hearing with the title board to fix the title and the ballot title and submission clause for the ballot. The staff member from the Office of Legislative Legal Services that is assigned to the initiative is responsible for preparing a staff draft title for the measure and a staff draft ballot question that mirrors the title. Article V, section 1 (5.5) of the Colorado Constitution requires that every law proposed by initiative must be limited to a single subject clearly expressed in the title.

Section 1-40-106.5, C.R.S., states the intent of the General Assembly that the title board, in setting titles, should apply judicial decisions construing the constitutional single-subject requirement for bills and should follow the same rules employed by the General Assembly in considering titles for bills. The drafter should be familiar with the cases construing initiative titles and the initiative process. A summary of the relevant case law on initiatives and an article on the single subject requirements for initiatives are contained in Appendix G.5 of this manual. In general, the ballot title and submission clause must have a single subject that is clearly expressed, should avoid the use of catch phrases or words that could form the basis of a slogan for or against the measure, include the central features of the measure, and should not be misleading. If the board has previously set a title for a similar initiative, use the title that the board set for the prior initiative as the base for the staff draft and modify as necessary.

When drafting a title for an initiative for the board, the staff should consider the following:

1. Does the title have a single subject that is clearly expressed?
2. Do the title and the ballot question match?
3. Is the ballot question understandable by the voters?
4. Can the ballot question be answered with a yes or no?
5. Is the effect of a "yes" vote clear?
6. Is the title misleading?
7. Does the title use catch phrases, advertisements, or slogans for the measure?

The staff should also review the Prioritized Checklist for Drafting Titles and Ballot Title and Submission Clauses for Proposed Initiatives in Appendix G.7 of this manual.

The submission clause, i.e., the ballot questions, contains the same language as the title with the addition of the phrase "SHALL THERE BE" at the beginning and the substitution of a question mark for a period at the end of the clause. This clause must be written so that the voter can answer the ballot question with either a yes/for or no/against. Section 1-40-106 (3)(c), C.R.S.,

requires the ballot title to specify whether there is a "change to the Colorado Revised Statutes" or an "amendment to the Colorado constitution".

Titles for a TABOR tax increase measure are required to have a title that states "Shall (district) taxes be increased (first, or if phased in, final, full fiscal year dollar increase) annually?" and titles for a TABOR debt increase measure are required to have a title that states "Shall (district) debt be increased (principal amount), with a repayment cost of (maximum total district cost)?". The amount of the increase can be left blank in the staff draft, and the board will add the amount specified in the fiscal impact statement prepared and submitted by Legislative Council Staff pursuant to section 1-40-105.5 to the final ballot title.

See Appendix G.3 of this manual for an example of a draft title and ballot question prepared for the board for and a prioritized checklist for drafting titles and ballot title and submission clauses for proposed initiatives. The staff draft must be sent in electronic form to the secretary of state's office by noon on the Friday prior to the board meeting at which a measure will be considered. The secretary of state's office will then prepare a new document with line numbers for the board meeting.

11.2.4 Title Board Meetings

The board will first determine if the measure has a single subject. If it does, the board will proceed to fix the title. The board will ask for comments from the proponents, who may suggest wording changes to the prepared title. A majority of the board (two of three) must agree to adopt the title and any amendments to the staff draft. If only two members are present on the board, both members must agree. After the comments have been received and any changes have been made, the title will be "fixed" by one of the board members either reading the entire text of the measure out loud, including the punctuation, or reading those portions of the staff draft that have been amended and noting those changes for the record. This meeting is also recorded.

11.2.5 Initial Fiscal Impact Statements and Abstracts

For each initiative that is submitted for review and comment and submitted to the board, Legislative Council Staff is required to prepare an initial fiscal impact statement. An abstract of this statement will be included in petition sections that proponents use to gather signatures. This information is due at the time of the board meeting, but the board does not conduct a hearing on the impact statement. The Office staff person who worked on the initiative does not have a formal role in preparing the fiscal impact statement, but should assist Legislative Council Staff as necessary. *See* § 1-40-105.5, C.R.S.

11.2.6 Motions for Rehearing

Any proponent or any registered elector who is not satisfied with a decision of the board regarding the single subject, is not satisfied with the title and submission clause set by the board, or claims that the title and submission clause are unfair or do not fairly express the true meaning and intent of the proposed state law or constitutional amendment may file a motion for rehearing with the secretary of state. The motion for rehearing must be filed within seven days after the board decision or the title and submission clause are set. The board will set the motion for rehearing at the next scheduled meeting of the title board or, if the title was set at the last meeting in April, within 48 hours, after expiration of the seven-day period for filing the motion.

If the board denies the motion for rehearing or if a person is aggrieved by the board's granting of the motion, the aggrieved person may file specified materials with the clerk of the supreme court within five days. The matter is required to be placed at the head of the court's docket. If the court reverses the action of the board, it will remand the matter with instructions to the title board pointing out where the title board is in error. The requirements for rehearing are contained in section 1-40-107, C.R.S.

11.2.7 Electronic Queuing

There is an electronic queueing system for initiatives in the Initiative/Referendum database. This system allows OLLS staff members to more easily stay abreast of where initiatives are in the process of drafting and transmitting review and comment memos and draft ballot titles. The system is patterned after the CLICS queue for bill drafts and is for internal use only.

Chapter 12: Guidelines for Drafting Uniform Acts

12.1 Background

The Uniform Law Commission (Commission), formerly known as the National Conference of Commissioners on Uniform State Laws, is a nonprofit, unincorporated association, composed of members from each state, that encourages the uniformity of state laws.

For the text of uniform acts, as approved by the Commission, see the Commission's website.

Commissioners meet each year at a national conference to examine the laws of states to determine which areas of law should be uniform. The commissioners draft, discuss, consider, and amend uniform act drafts and work toward the enactment of the uniform acts in their home states. For membership and creation of the Colorado Commission on Uniform State Laws (Colorado Commission or CCUSL), which sends its members to the national conference, see section 2-3-601 et seq., C.R.S., and the CCUSL Additional Information webpage.

The Commission intends, for the most part, that the uniform acts be followed exactly, and they urge state legislatures to adopt the uniform acts exactly as written in order to promote uniformity in laws among the states. However, the uniform acts are usually written in ways that are inconsistent with C.R.S. format and the Office's procedures and practices, and questions often arise about when it is appropriate to change something in a uniform act. This chapter serves as a guideline for drafting and editing uniform acts.

Drafters and editors should note that this chapter does not cover every situation or question that may arise when drafting uniform acts. If a drafter or editor is unsure about a change or questions arise that are not addressed in this chapter, the drafter or editor should see the Revisor of Statutes; the Publications Coordinator' or the Secretary of the Colorado Commission, who is a staff member of the Office.

12.2 Language in Uniform Acts

12.2.1 Final Versions of the Uniform Acts

Because the Commission makes changes over time to the uniform acts as the acts go through the drafting process, the drafter should ensure that the drafter has the final version of the

uniform act. The Commission does not typically finalize an act until September or October of the year in which it was adopted.

12.2.2 Language in the Uniform Act Should Generally Not be Changed

- Keep changes to a minimum.
- Do not make preferential changes except as specified in this Chapter 12.
- Make changes only if it's necessary to conform to other Colorado law or to circumstances unique to Colorado or if directed to do so by the sponsor or by amendment.
- Make changes if it appears a genuine technical mistake in drafting was made. This might include, for example, a word was left out, a word should have been taken out but was left in (such as an extra "; and" in a list of paragraphs or subparagraphs), the wrong word was used ("in" should be "on"), an internal reference is wrong, or the act has incorrect dates or dates that need to change due to timing issues. If you think there is a technical mistake, notify the Secretary of the Colorado Commission, as it will be useful to have the mistake verified and to also have the mistake fixed in other states that are considering the same language.
- If substantial Colorado-specific changes are made, during publications in the interim, work with the Publications Coordinator and the Revisor of Statutes to add an editor's note summarizing the change. For an example, see the editor's note for section 4-9-102, C.R.S.:

> (2) **Colorado legislative change:** Colorado substituted the phrase "Oil, gas, minerals, or other substances of value that may be extracted from the earth" for the phrase "Oil, gas, or other minerals" in subsection (a)(6) and added subsection (a)(8.5). Colorado added clause (ii) in subsection (a)(11), added subsection (a)(22.5), added the phrase "except as used in section 4-9-310 (c)," in subsection (a)(60), and added the phrase "except as used in section 4-9-609 (b)," in subsection (a)(64). Colorado reserved three definitional subsections, (a)(65) through (a)(67); all subsequent definitions are numbered correspondingly different from the uniform act. Colorado did not adopt the definition of a "public finance transaction".

12.2.3 Language Should Not be Changed Just to Conform to Standard Office Practices

For example, leave the following language as is:

Short title. This part 2 may be cited as the "Uniform . . ." (rather than "The short title of this part 2 is the "Uniform...")

Definitions. In this part 2: ... (rather than "As used in this part 2, unless the context otherwise requires:")

12.3 Format and Technical Changes in Uniform Acts

12.3.1 Numbering

Uniform acts are numbered and lettered differently than the C.R.S. numbering and lettering system. For example, uniform acts are usually numbered and lettered in the following manner:

- Sections are either 1, 2, 3, etc., or 101, 102, 103, etc.
- Subsections are small letters: (a), (b), (c), etc.
- Paragraphs are numerals: (1), (2), (3), etc.
- Subparagraphs are capital letters: (A), (B), (C), etc.
- Sub-subparagraphs are little roman numerals: (i), (ii), (iii), etc.

For all uniform acts, if a new article, part, or section is being added, use the C.R.S. numbering system for correct placement in the C.R.S.

The preference is that the Office keep the numbering and lettering of the uniform act. If the uniform act is short, doesn't have many comments, and seems unlikely to be amended, the drafter should reach out to the Secretary of the Colorado Commission to see if it would be appropriate to use C.R.S. numbering and lettering.

12.3.2 Punctuation

Generally, the drafter should change the Commission's punctuation system to conform to the C.R.S. punctuation system, particularly for punctuation at the end of introductory portions or paragraphs.

For example, the drafter should:

- Add serial commas;
- Add colons to introductory portions;

- If appropriate, change punctuation at the end of paragraphs, subparagraphs, etc., in a list following an introductory portion; and
- Add commas around prepositional phrases.

However, be very conservative when making changes to punctuation within the language of the uniform act, because the Commission intended the uniform act to be drafted in a certain way. Changing punctuation may lead to a different interpretation of the meaning of a provision. Also, there may be indications in the official comments for the uniform act that punctuation was used in a certain way so that the provision could be interpreted a certain way.

12.3.3 Headings and Headnotes

Draft part and article headings and headnotes in standard Office format. Change semicolons to dashes.

12.3.4 Internal References and Names of Acts

Use the Office's standard practices for writing internal references to state and federal law and the short titles of acts.

- this part 2 or this article 2, instead of this uniform act or this act
- section 23-16-206 (b), instead of section 106 (b)
- section 15-5-813 (c)(2) or (c)(3), instead of section 113 (c)(2) or (3)
- subsection (b) of this section, instead of subsection (b)
- subsections (c) to (i) instead of subsections (c) through (i)
- "Uniform Athlete Agents Act," instead of Uniform Athlete Agents Act
- section 102 of the federal "Electronic Signatures in Global and National Commerce Act, Pub.L. 106-229, 114 Stat. 464 (2000), or the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., instead of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000).

12.3.5 Definitions

Definitions sections should be in alphabetical order, even if the ULC did not put them in alphabetical order.

12.3.6 Spelling

Correct misspellings, including deleting or adding hyphens. If the Office has a preferred way of spelling a word, use the preferred spelling.

12.3.7 Capitalization

Initial cap the first word following a subsection letter, paragraph number, etc. Use standard Office practices for capitalization of words.

12.3.8 Writing Numbers as Words

Write numbers as words instead of digits in accordance with standard Office practices.

12.3.9 Gender-neutral Language

Change language in the uniform act to make it gender neutral.

12.3.10 Which v. That

Do not change "which" and "that."

12.4 SPONSORSHIP AND SUMMARY IN UNIFORM ACT BILLS

If a uniform act has **not** been recommended by the CCUSL, use the regular sponsor and summary formats for the bill.

12.4.1 Sponsorship of Uniform Act Bills

If a uniform act has been recommended by the Colorado Commission:

- If sponsorship of the uniform act has not been assigned:
    - Change "HOUSE BILL" or "SENATE BILL" to "COMMITTEE BILL," just above the sponsorship box line on the right-hand side of the bill.
    - "Colorado Commission on Uniform State Laws" should be centered, initial-capped, and in bold-faced type at the top of the sponsorship box.

- One or more legislators, whether or not they are a member of the Colorado Commission, will be assigned as sponsors of the uniform act bills. When sponsorship of the uniform act bill has been assigned, use the regular sponsorship format for bills that started as committee bills.

12.4.2 Summary of Uniform Act Bills

If a uniform act has been recommended by the Colorado Commission:

- Add to the beginning of the summary **Colorado Commission on Uniform State Laws**.
- In the first paragraph of the summary, add language that the Commission used to summarize the act or a summary of that summary. For example:
    - The bill enacts the '[Name of the Uniform Act]", drafted by the Uniform Law Commission.
    - The bill makes changes to the "[Name of the Uniform Act]", as drafted by the Uniform Law Commission.
    - The bill replaces "[Name of Uniform Act]" with the "[Name of Uniform Act]", drafted by the Uniform Law Commission.

12.5 OFFICIAL COMMENTS FOR NEW UNIFORM ACTS

12.5.1 Publishing the Official Comments in the C.R.S.

Until 2017, the practice of the Colorado Commission and the Office was that, if a uniform act became law, the Office would publish official comments to the act as prepared by the Commission, but only if the bill included either a statutory or nonstatutory requirement for the Revisor of Statutes to do so. Beginning in 2018, on a prospective basis only, the Office began, as a matter of course, publishing the URL to the Commission's website where the official Commission comments appear in a cross reference after each particular C.R.S. section in the act that has a Commission official comment.

12.5.2 Final Versions of the Official Comments

Because changes are made over time to the official comments of a uniform act by the ULC as it goes through their drafting process, the drafter should ensure that he or she has the final version of the official comments for publishing.

12.5.3 Notify Publications Coordinator

The drafter must notify the Publications Coordinator of each individual C.R.S. section that has an official comment and provide the coordinator with the URL for official comments that will need to be added to the statute books.

12.6 Contact Information for the Uniform Law Commission

The office of the ULC is located in Chicago, Illinois.

312-450-6600

info@uniformlaws.org

https://www.uniformlaws.org/

Appendix A: Examples of Bills, Resolutions, and Memorials

Notice about the Format of the Examples in this Appendix:

With the exception of the links to measures introduced in a given legislative session, the examples found in this appendix do not reflect the full format used for bills, resolutions, and memorials. Therefore, the examples found in this appendix should be used as a guide for the substantive portions of a bill.

Please be aware that links and examples in this appendix are based on actual legislation introduced in the Colorado General Assembly, but in the case of the excerpted bill and resolution examples included in this appendix, they are not exact replicas of previous legislation. Certain elements of these sample bills and resolutions have been changed to reflect current drafting practices. (Note: Depending on details that are specific to the bill you are drafting, the text contained in the examples may need to be modified in order to adequately address the issues of your bill.)

If you have a question about format inconsistencies or a question about whether example language needs to be modified to fit your particular bill, please see a senior legislative editor or your team leader.

A.1 Bill Examples

A.1.1 Bill Amending & Repealing Existing Law

Note: This example includes an act-subject-to-petition (ASP) clause.

A BILL FOR AN ACT

CONCERNING THE LOW-INCOME TELEPHONE ASSISTANCE PROGRAM.

Bill Summary

The "Emergency Telephone Access Act" (act) created the low-income telephone assistance program (LITAP), pursuant to which basic local exchange service providers charge a monthly fee, currently set by the public utilities commission (commission) at $0.07, to their customers that is used to provide a $6.50-per-month subsidy for basic local exchange telecommunications service to certain low-income individuals certified by the department of human services (DHS) as qualified to receive financial assistance payments.

The bill makes a person eligible to receive low-income telephone assistance if the person is:

- A legal resident of Colorado;
- A current or prospective subscriber to basic local exchange service; and
- Certified by DHS to receive financial assistance payments under at least one of 6 listed assistance programs.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 40-3.4-105, **amend** (1); and **repeal** (3) as follows:

40-3.4-105. Low-income telephone assistance - eligibility. (1) ~~Individuals~~ AN INDIVIDUAL is eligible for low-income telephone assistance ~~shall be those persons who~~ IF THE PERSON:

(a) ~~Are~~ Is certified by the department of human services ~~as qualified~~ to receive financial assistance payments UNDER AT LEAST ONE OF THE FOLLOWING PROGRAMS:

(I) AN OLD AGE PENSION AS SET FORTH IN SECTION 26-2-111 (2);

(II) AID TO THE NEEDY DISABLED AS SET FORTH IN SECTION 26-2-111 (4);

(III) AID TO THE BLIND AS SET FORTH IN SECTION 26-2-111 (5);

(IV) SUPPLEMENTAL SECURITY INCOME BENEFITS UNDER THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, 42 U.S.C. SEC. 1601 ET SEQ.;

(V) COLORADO WORKS ASSISTANCE AS SET FORTH IN SECTION 26-2-706; OR

(VI) LOW-INCOME HOME ENERGY ASSISTANCE BENEFITS UNDER THE FEDERAL "ENERGY POLICY ACT OF 2005", AS AMENDED, 42 U.S.C. SEC. 8621 ET SEQ.

(b) ~~Are~~ IS A current or prospective ~~subscribers~~ SUBSCRIBER to basic local exchange service, as defined in section 40-15-102; AND

(c) ~~Are citizens~~ IS A CITIZEN or legal ~~residents~~ RESIDENT of the United States and ~~residents~~ A RESIDENT of Colorado. ~~And~~

(d) ~~Have a monthly household gross income at or below one hundred eighty-five percent of the federal poverty line.~~

(3) ~~In providing low-income telephone assistance, the department of human services shall give priority to households where one or more persons are recipients of:~~

~~(a) An old age pension as set forth in section 26-2-111 (2), C.R.S.;~~

~~(b) Aid to the needy disabled as set forth in section 26-2-111 (4), C.R.S.;~~

~~(c) Aid to the blind as set forth in section 26-2-111 (5), C.R.S.;~~

~~(d) Supplemental social security disability benefits under 42 U.S.C. sec. 1396 et seq.; or~~

~~(e) Colorado works assistance as set forth in sections 26-2-706 and 26-2-707, C.R.S.~~

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November [*macro will insert applicable even-numbered year*] and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

A.1.2 Bill Amending Existing Law

SB24-089 - bill includes an applicability clause & a safety clause.

A.1.3 Bill Adding New Material

Note: This example includes a safety clause.

A BILL FOR AN ACT

CONCERNING A REQUIREMENT THAT THE ATTORNEY GENERAL COORDINATE WITH THE DEPARTMENT OF EDUCATION IN AN EFFORT TO PREVENT THE PROLIFERATION OF FACTUALLY INACCURATE DATA BY SHARING RESOURCES TO ENCOURAGE RESPECTFUL DISCOURSE.

Bill Summary

To prevent and combat the sharing and spreading of factually inaccurate data, the attorney general is required to:

- Establish an initiative to encourage respectful engagement and discourse;
- Develop and share resources to facilitate productive and honest conversations regarding statewide and national issues to help people find common ground; and
- Collaborate with organizations across the state to develop and update the materials that are used in connection with the resources and coordinate with the department of education to make the resources available to schools and school districts in the state.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 24-31-119 as follows:

24-31-119. Factually inaccurate data prevention campaign - repeal. (1) TO PREVENT AND COMBAT THE SHARING AND SPREADING OF FACTUALLY INACCURATE DATA, THE ATTORNEY GENERAL SHALL, AT A MINIMUM:

(a) ESTABLISH AN INITIATIVE TO ENCOURAGE RESPECTFUL ENGAGEMENT AND DISCOURSE;

(b) DEVELOP AND SHARE RESOURCES THAT CAN BE USED BY SCHOOLS, ORGANIZATIONS, AND COMMUNITY LEADERS TO FACILITATE PRODUCTIVE AND HONEST CONVERSATIONS REGARDING STATEWIDE AND NATIONAL ISSUES TO HELP PEOPLE FIND COMMON GROUND; AND

(c) COLLABORATE WITH ORGANIZATIONS ACROSS THE STATE TO DEVELOP AND UPDATE THE MATERIALS THAT ARE USED IN CONNECTION WITH THE RESOURCES AND COORDINATE WITH THE DEPARTMENT OF EDUCATION TO MAKE THE RESOURCES AVAILABLE TO SCHOOLS AND SCHOOL DISTRICTS IN THE STATE.

(2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2026.

SECTION 2. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.

A.1.4 Bill Repealing Existing Law

Note: This example includes an applicability & a safety clause.

A BILL FOR AN ACT

CONCERNING THE ELIMINATION OF THE REQUIREMENT THAT CERTAIN INSURERS FILE COLORADO-SPECIFIC FINANCIAL INFORMATION WITH THE COMMISSIONER OF INSURANCE.

Bill Summary

All insurance companies doing business in this state must annually file with the commissioner of insurance a statement under oath that includes a variety of information relating to the companies' financial solvency, including the substance of the information required by what is known as the "convention blank form" adopted by the national association of insurance commissioners (NAIC). The bill repeals the requirement that property and casualty insurers separately also file information contained in NAIC's schedule P of the convention blank form.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes,10-3-208, **repeal** (8) as follows:

10-3-208. Financial statements. (8) ~~(a) As part of the financial statement required in subsection (1) of this section, each property and casualty insurer regulated under article 4 of this title shall submit to the commissioner the information required in schedule P of the national association of insurance commissioners (NAIC) annual statement filed with the commissioner. The information shall be provided for Colorado business only for the following lines of insurance and shall include all information required to fully complete each column of each applicable part of schedule P of the convention blank for the annual statement adopted by the NAIC:~~

~~(I) Private passenger automobile total;~~

~~(II) Commercial automobile total;~~

~~(III) Homeowners multiple peril;~~

~~(IV) Farmowners multiple peril;~~

~~(V) Commercial multiple peril;~~

~~(VI) Medical malpractice; and~~

~~(VII) Other liability.~~

~~(b) For purposes of complying with the requirements of this subsection (8), a property nd casualty insurer shall not be required to report information for calendar years commencing prior to January 1, 2002.~~

SECTION 2. Applicability. This act applies to annual financial statements filed on or after the effective date of this act.

SECTION 3. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.

A.1.5 Bill Amending and Repealing Existing Law and Adding New Material

Note: This example includes a safety clause.

A BILL FOR AN ACT

CONCERNING MEASURES TO INCREASE PROTECTIONS FROM PERFLUOROALKYL AND POLYFLUOROALKYL CHEMICALS.

Bill Summary

Current law prohibits the sale or distribution of products in certain product categories on and after certain dates (product phaseout timeline) if the products contain intentionally added perfluoroalkyl and polyfluoroalkyl chemicals (PFAS chemicals). The act changes current law by:

- On and after January 1, 2025, prohibiting the sale or distribution of certain outdoor apparel intended for extreme or extended use in severe wet conditions (outdoor apparel for severe wet conditions) that contains intentionally added PFAS chemicals unless the product is accompanied by a disclosure that states that the product contains intentionally added PFAS chemicals (disclosure requirement);
- On and after January 1, 2026, as part of the product phaseout timeline, banning the sale or distribution of cleaning products that are not medical floor maintenance products, cookware, dental floss, menstruation products, and ski wax that contain intentionally added PFAS chemicals;
- On and after January 1, 2028, as part of the product phaseout timeline, repealing the disclosure requirement and banning the sale or distribution of medical floor maintenance products, textile articles, outdoor apparel for severe wet conditions, and food equipment intended primarily for use in commercial settings that contain intentionally added PFAS chemicals; and
- On and after January 1, 2026, prohibiting a person from installing artificial turf that contains intentionally added PFAS chemicals on any portion of property in the state.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **amend** 25-15-601 as follows:

25-15-601. Short title. The short title of this part 6 is the "Perfluoroalkyl and Polyfluoroalkyl Chemicals ~~Consumer~~ Protection Act".

SECTION 2. In Colorado Revised Statutes, 25-15-602, **amend** (1) introductory portion, (1)(f) introductory portion, and (2) as follows:

25-15-602. Legislative declaration. (1) The general assembly hereby finds and declares that:

(f) If the widespread sale and distribution of products that contain intentionally added PFAS chemicals ~~continues~~ AND THE INSTALLATION OF ARTIFICIAL TURF THAT CONTAINS INTENTIONALLY ADDED PFAS CHEMICALS CONTINUE in the state:

(2) The general assembly therefore determines and declares that it is imperative for the health and safety of the state's residents to create a regulatory scheme that:

(a) Phases out the sale or distribution of certain products and product categories in the state that contain intentionally added PFAS chemicals; AND

(b) PROHIBITS THE INSTALLATION OF ARTIFICIAL TURF THAT CONTAINS INTENTIONALLY ADDED PFAS CHEMICALS.

SECTION 3. In Colorado Revised Statutes, 25-15-603, **amend** (20)(c); **repeal** (6) and (8); and **add** (1.5), (1.7), (2.5), (4)(c), (16.5), (16.7), (23.5), and (24.5) as follows:

25-15-603. Definitions - repeal. As used in this part 6, unless the context otherwise requires:

(1.5) "APPAREL" MEANS:

(a) CLOTHING ITEMS INTENDED FOR REGULAR WEAR OR FORMAL OCCASIONS, INCLUDING ATHLETIC WEAR, BIBS, BODYSUITS, COSTUMES, DANCEWEAR, DIAPERS, DRESSES, EVERYDAY SWIMWEAR, EVERYDAY WORK UNIFORMS, FOOTWEAR, FORMAL WEAR, LEGGINGS, LEISUREWEAR, ONESIES, OVERALLS, PANTS, SARIS, SCARVES, SCHOOL UNIFORMS, SHIRTS, SKIRTS, SPORTS UNIFORMS, SUITS, TOPS, UNDERGARMENTS, AND VESTS; AND

(b) OUTDOOR APPAREL.

(1.7) (a) "AUTOMOTIVE CLEANING PRODUCT" MEANS A CHEMICALLY FORMULATED CONSUMER PRODUCT LABELED TO INDICATE THAT THE PURPOSE OF THE PRODUCT IS TO MAINTAIN THE APPEARANCE OF A MOTOR VEHICLE, INCLUDING PRODUCTS FOR WASHING, WAXING, POLISHING, CLEANING, OR TREATING THE EXTERIOR OR INTERIOR SURFACES OF MOTOR VEHICLES.

(b) "AUTOMOTIVE CLEANING PRODUCT" DOES NOT INCLUDE AUTOMOTIVE PAINT OR PAINT REPAIR PRODUCTS.

(2.5) (a) "CLEANING PRODUCT" MEANS A FINISHED PRODUCT USED PRIMARILY FOR DOMESTIC, COMMERCIAL, OR INSTITUTIONAL CLEANING PURPOSES.

(b) "CLEANING PRODUCT" INCLUDES AN AIR CARE PRODUCT, AN AUTOMOTIVE CLEANING PRODUCT, A GENERAL CLEANING PRODUCT, AND A POLISH OR FLOOR MAINTENANCE PRODUCT.

(4) (c) "COOKWARE" DOES NOT INCLUDE FOOD EQUIPMENT INTENDED PRIMARILY FOR USE IN COMMERCIAL SETTINGS, INCLUDING FOOD EQUIPMENT SOLD TO A BUSINESS THAT HAS A RETAIL FOOD ESTABLISHMENT LICENSE.

(6) ~~"Department" means the Colorado department of public health and environment.~~

(8) ~~"Executive director" means the executive director of the department or the executive director's designee.~~

(16.5) (a) "OUTDOOR APPAREL" MEANS APPAREL INTENDED PRIMARILY FOR USE IN OUTDOOR ACTIVITIES, INCLUDING BICYCLING, CAMPING, CLIMBING, FISHING, HIKING, AND SKIING.

(b) "OUTDOOR APPAREL" DOES NOT INCLUDE OUTDOOR APPAREL FOR SEVERE WET CONDITIONS.

(16.7) (a) "OUTDOOR APPAREL FOR SEVERE WET CONDITIONS" MEANS OUTDOOR APPAREL THAT IS:

(I) AN EXTREME AND EXTENDED USE PRODUCT THAT PROVIDES PROTECTION AGAINST EXTENDED EXPOSURE TO EXTREME RAIN CONDITIONS OR AGAINST EXTENDED IMMERSION IN WATER OR WET CONDITIONS, SUCH AS SNOW CONDITIONS, IN ORDER TO PROTECT THE HEALTH AND SAFETY OF THE USER;

(II) DESIGNED FOR USE BY OUTDOOR SPORTS EXPERTS; AND

(III) NOT MARKETED FOR GENERAL CONSUMER USE.

(b) "OUTDOOR APPAREL FOR SEVERE WET CONDITIONS" INCLUDES OUTERWEAR INTENDED FOR USE IN OFFSHORE FISHING, OFFSHORE SAILING, WHITEWATER KAYAKING, AND MOUNTAINEERING.

(c) "OUTDOOR APPAREL FOR SEVERE WET CONDITIONS" DOES NOT INCLUDE PERSONAL FLOTATION DEVICES MADE FOR THE HEALTH AND SAFETY OF THE USER.

(20) (c) "Product" does not include:

(I) Drugs, medical devices, biologics, or diagnostics ~~approved or authorized~~ USED IN A MEDICAL SETTING OR IN MEDICAL APPLICATIONS REGULATED by the federal food and drug administration; ~~or the federal department of agriculture; or~~

(II) Veterinary pesticide AND PARASITICIDE products approved by the federal environmental protection agency OR THE FEDERAL DEPARTMENT OF AGRICULTURE for use in animals; ~~or~~

(II.5) BIOLOGICS OR DIAGNOSTICS APPROVED BY THE FEDERAL DEPARTMENT OF AGRICULTURE FOR USE IN A VETERINARY SETTING OR IN VETERINARY APPLICATIONS; OR

(III) Packaging used for the products described in subsections (20)(c)(I), ~~and~~ (20)(c)(II), OR (20)(c)(II.5) of this section.

(23.5) "SKI WAX" MEANS A LUBRICANT APPLIED TO THE BOTTOM OF SNOW RUNNERS, INCLUDING SKIS AND SNOWBOARDS, TO IMPROVE THE GRIP OR GLIDE PROPERTIES OF THE SNOW RUNNERS.

(24.5) (a) "TEXTILE ARTICLE" MEANS A TEXTILE THAT IS PRIMARILY USED IN HOUSEHOLDS AND BUSINESSES.

(b) "TEXTILE ARTICLE" INCLUDES ACCESSORIES, APPAREL, BACKPACKS, AND HANDBAGS.

(c) "TEXTILE ARTICLE" DOES NOT INCLUDE:

(I) OUTDOOR APPAREL FOR SEVERE WET CONDITIONS;

(II) OUTDOOR TEXTILE FURNISHINGS;

(III) OUTDOOR UPHOLSTERED FURNITURE; AND

(IV) TEXTILE ARTICLES USED IN MEDICAL, PROFESSIONAL, OR INDUSTRIAL SETTINGS.

SECTION 4. In Colorado Revised Statutes, 25-15-604, **add** (2)(g), (2.5), (3.5), and (5) as follows:

25-15-604. Prohibition on the sale or distribution of certain products that contain intentionally added PFAS chemicals - product disclosure requirements - repeal. (2) (g) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE JANUARY 1, 2026.

(2.5) (a) ON AND AFTER JANUARY 1, 2025, A PERSON SHALL NOT SELL, OFFER FOR SALE, DISTRIBUTE FOR SALE, OR DISTRIBUTE FOR USE IN THE STATE, INCLUDING IN AN INTERNET LISTING OR TRANSACTION, AN OUTDOOR APPAREL FOR SEVERE WET CONDITIONS PRODUCT THAT CONTAINS INTENTIONALLY ADDED PFAS CHEMICALS UNLESS THE PRODUCT IS ACCOMPANIED BY A LEGIBLE AND EASILY DISCERNIBLE DISCLOSURE THAT INCLUDES THE PHRASE "MADE WITH PFAS CHEMICALS".

(b) THIS SUBSECTION (2.5) IS REPEALED, EFFECTIVE JANUARY 1, 2028.

(3.5) On and after January 1, 2026, a person shall not sell, offer for sale, distribute for sale, or distribute for use in the state the following products that contain intentionally added PFAS chemicals:

(a) Cleaning products, except for cleaning products that are floor maintenance products used in hospital or medical settings;

(b) Cookware;

(c) Dental floss;

(d) Menstruation products; and

(e) Ski wax.

(5) On and after January 1, 2028, a person shall not sell, offer for sale, distribute for sale, or distribute for use the following products that contain intentionally added PFAS chemicals:

(a) Cleaning products that are floor maintenance products used in hospital or medical settings;

(b) Textile articles;

(c) Outdoor apparel for severe wet conditions; and

(d) Food equipment intended primarily for use in commercial settings that comes into direct contact with food.

SECTION 5. In Colorado Revised Statutes, **add** 25-15-605 as follows:

25-15-605. Prohibition on the installation of artificial turf that contains intentionally added PFAS chemicals. (1) On and after January 1, 2026, a person shall not install artificial turf that contains intentionally added PFAS chemicals on any portion of property in the state.

(2) Nothing in this section prohibits a person from maintaining artificial turf installed before January 1, 2026.

SECTION 6. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.

A.1.6 Bill Amending and Reorganizing Entire Titles, Articles, or Parts and Repealing the Relocated Provisions

See Appendix L: Bills With Relocated Provisions.

For additional examples, see HB23-1026, HB20-1286, or SB24-025.

A.1.7 Sunset Bill

Note: This is an example of a director-model practice act and includes an ASP clause based on a Sept. 1 repeal date; see note at end of bill for when a safety clause is necessary in a sunset bill.

A BILL FOR AN ACT

CONCERNING THE CONTINUATION OF THE REGULATION OF NATUROPATHIC DOCTORS BY THE DIRECTOR OF THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES, AND, IN CONNECTION THEREWITH, IMPLEMENTING THE RECOMMENDATIONS CONTAINED IN THE [INSERT YEAR] SUNSET REPORT BY THE DEPARTMENT [OF REGULATORY AGENCIES].[1]

Bill Summary

Sunset Process - Senate ___ Committee. The bill implements the recommendations of the department of regulatory agencies, as contained in the department's sunset review of naturopathic doctors, as follows:

- Continues the regulation of naturopathic doctors by the director of the division of professions and occupations for 5 years, until September 1, 2022 (*Recommendation 1*, **sections 1 and 2**);
- Requires insurance carriers to report to the director any malpractice judgments against or settlements entered into by a naturopathic doctor (*Recommendation 2*, **section 3**);

[*Note: The remainder of this bill summary has been removed from this illustration. The format of this bill reflects a sunset bill draft that is presented, prior to introduction, to the committee of reference that is conducting the sunset hearing on the matter; if the committee approves introduction of the sunset bill, the reference to the specific recommendations in the sunset report should be removed from the bill summary and the text of the bill before putting the draft on bill paper.*]

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 24-34-104, **repeal** (19)(a)(XII); and **add** (30(a)(III) as follows:

24-34-104. General assembly review of regulatory agencies and functions for

[1] The title must include the name of the agency, division, or board in accordance with 24-34-104 (7)(a). Since the department is mentioned in the title in this example, no need to repeat the department name in the trailer; many sunset bills will refer to a board, commission, or other entity that may or may not be within DORA; if DORA is not mentioned in the title, the full department name of DORA should be included in the trailer.

repeal, continuation, or reestablishment - legislative declaration - repeal. (19) (a) The following agencies, functions, or both, are scheduled for repeal on September 1, 2020:

(XII) ~~The registration of naturopathic doctors in accordance with article 250 of title 12;~~

(30) (a) The following agencies, functions, or both, are scheduled for repeal on September 1, 2029:

(VIII) THE REGISTRATION OF NATUROPATHIC DOCTORS IN ACCORDANCE WITH ARTICLE 250 OF TITLE 12.

SECTION 2. In Colorado Revised Statutes, 12-250-121, **amend** (1) as follows:

12-250-121. Repeal of article - subject to review - definition. (1) This article 250 is repealed, effective ~~September 1, 2020~~ SEPTEMBER 1, 2029. Before the repeal, the registration of naturopathic doctors is scheduled for review in accordance with section 24-34-104.

Recommendation 2

SECTION 3. In Colorado Revised Statutes, **add** 10-1-125.5 as follows:

10-1-125.5. Reporting of malpractice claims against naturopathic doctors. EACH INSURANCE COMPANY LICENSED TO DO BUSINESS IN THIS STATE AND ENGAGED IN WRITING MALPRACTICE INSURANCE FOR NATUROPATHIC DOCTORS REGISTERED UNDER ARTICLE 250 OF TITLE 12 SHALL SEND TO THE DIRECTOR OF THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES, IN THE FORM PRESCRIBED BY THE COMMISSIONER, INFORMATION RELATING TO EACH MALPRACTICE CLAIM AGAINST A REGISTERED NATUROPATHIC DOCTOR THAT IS SETTLED OR IN WHICH JUDGMENT IS RENDERED AGAINST THE INSURED NATUROPATHIC DOCTOR. THE INSURANCE COMPANY SHALL INCLUDE ANY INFORMATION THE DIRECTOR DETERMINES NECESSARY TO ENABLE THE DIRECTOR TO CONDUCT A FURTHER INVESTIGATION AND HEARING.

[*Note: The remainder of the substantive provisions of this bill have been removed from this illustration.*]

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November [*macro will insert applicable even-numbered year*]

and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

[*Note: If the original sunset review/repeal date in section 24-34-104 and the organic statute is July 1 or a date earlier than 90 days after the end of a legislative session, the bill must contain a safety clause. If the bill does not have a safety clause, the bill would take effect after the organic statute has already been repealed, which is a problem.*]

A.1.8 Bill Containing a Nonstatutory Legislative Declaration Section

Note: This example includes an applicability & ASP clause.

A BILL FOR AN ACT

CONCERNING THE EXEMPTION FROM LAWS REGULATING MORTGAGE LOAN ORIGINATORS OF CERTAIN PERSONS PROVIDING SELLER FINANCING FOR THE SALE OF A LIMITED NUMBER OF RESIDENTIAL PROPERTIES.

Bill Summary

The bill exempts from the "Mortgage Loan Originator Licensing and Mortgage Company Registration Act" a person, estate, or trust that provides mortgage financing for the sale of no more than 3 residential properties in any 12-month period to purchasers of such properties, each of which is owned by the person, estate, or trust.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds that:

(a) Colorado is currently experiencing a deep economic recession;

(b) The housing market is vital to any economic recovery in Colorado;

(c) The recovery of housing markets in Colorado, much like other states, is impeded by tight credit market conditions and the inability of borrowers to receive the financing necessary to purchase real property and thereby relieve the markets of excess inventory; and

(d) In order for excess inventory to be consumed, and thereby the housing market to recover, property owners must have the ability to convey real property in Colorado using all available means of financing.

SECTION 2. In Colorado Revised Statutes, 12-10-709 , **amend** (1) introductory portion and (1)(b) as follows:

12-10-709. Exemptions. (1) Except as otherwise provided in section 12-10-713, this part 7 ~~shall~~ DOES not apply to the following:

(b) ~~An individual who only offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence~~ WITH RESPECT TO A RESIDENTIAL MORTGAGE LOAN, A PERSON, ESTATE, OR TRUST THAT PROVIDES MORTGAGE FINANCING FOR THE SALE OF NO MORE THAN THREE PROPERTIES IN ANY TWELVE-MONTH PERIOD TO PURCHASERS OF

SUCH PROPERTIES, EACH OF WHICH IS OWNED BY SUCH PERSON, ESTATE, OR TRUST AND SERVES AS SECURITY FOR THE LOAN;

SECTION 3. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November [*macro will insert applicable even-numbered year*] and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to acts occurring on or after the applicable effective date of this act.

A.1.9 Bill Contingent on Passage of Another Measure

HB24-1390 - specific sections effective only if another bill becomes law.

SB24-230 - specific sections effective only if another bill becomes law; specific sections effective only if another bill does not become law.

HB24-1450 - specific CRS subsections, as amended in the bill, only take effect if another bill becomes law (note that this is the 2024 Revisor's Bill, which also includes, at the end of the bill, an explanatory table that lists the CRS section amended in the bill, the corresponding section in the bill, and an explanation of the change to the CRS section.

HB24-1225 - bill effective only if concurrent resolution is approved by voters.

A.1.10 Bill with Multiple Effective Dates

SB24-073 - bill with specified effective date and exception for specific provisions effective upon passage.

SB23-200 - bill takes effect upon passage, but specified provisions take effect on specific date.

A.1.11 Bill Making a Supplemental Appropriation by Amending a Prior Long Bill

Note: Supplemental Bills are prepared by JBC staff. Examples of supplemental bills are linked below for informational purposes.

HB24-1180 - supplemental appropriation to Department of Agriculture

HB24-1197 - supplemental appropriation to Department of Public Safety; this example also shows amendments made to the bill in the House.

A.1.12 Bill to Be Referred to the Voters at the next General Election

Note: This example includes a nonTABOR referendum clause. This bill is included as-written for demonstrative purposes but does not reflect the current contents of part 11 of article 4 of title 1.

A BILL FOR AN ACT

CONCERNING THE ESTABLISHMENT OF A BINDING PREFERENCE PRESIDENTIAL PRIMARY ELECTION.

Bill Summary

The bill authorizes a binding preference presidential primary election in Colorado. The bill establishes qualifications for candidates to be placed on presidential primary election ballots. An elector is allowed to vote only for a candidate who is affiliated with the same political party as the elector. The secretary of state is required to assign binding vote assignments to delegates to presidential conventions based on the proportion of votes received by threshold candidates in the entire state and each congressional district. The bill provides that binding vote assignments are only binding on the first vote to choose a presidential candidate.

The bill refers the question of a binding preference presidential primary election to the electors of Colorado at the next general election.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** part 11 to article 4 of title 1 as follows:

PART 11

PRESIDENTIAL PRIMARY ELECTIONS

1-4-1101. Definitions. AS USED IN THIS PART 11, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "PRESIDENTIAL PRIMARY ELECTION" MEANS A PRIMARY ELECTION CONDUCTED PURSUANT TO SECTION 1-4-1102.

(2) "THRESHOLD CANDIDATE" MEANS, WITH RESPECT TO THIS STATE AS A WHOLE OR ANY CONGRESSIONAL DISTRICT WITHIN THIS STATE, A CANDIDATE IN A PRESIDENTIAL PRIMARY ELECTION WHO RECEIVES AT LEAST FIFTEEN PERCENT OF THE VOTES CAST IN THIS ENTIRE STATE OR ANY CONGRESSIONAL DISTRICT WITHIN THIS STATE FOR ALL CANDIDATES ON THE PRESIDENTIAL PRIMARY ELECTION BALLOT WHO ARE OF THE SAME POLITICAL PARTY AS THAT CANDIDATE.

1-4-1102. Presidential primary elections - when - conduct. (1) A PRESIDENTIAL PRIMARY ELECTION SHALL BE HELD AT THE REGULAR POLLING PLACES IN EACH PRECINCT ON THE FOURTH TUESDAY OF FEBRUARY IN YEARS IN WHICH A UNITED STATES PRESIDENTIAL ELECTION IS TO BE HELD FOR THE SELECTION OF DELEGATES TO NATIONAL POLITICAL CONVENTIONS WHICH WILL SELECT PRESIDENTIAL CANDIDATES OF POLITICAL PARTIES TO BE VOTED FOR AT THE SUCCEEDING GENERAL ELECTION.

(2) EACH POLITICAL PARTY WHO IS REPRESENTED BY A CANDIDATE ENTITLED TO PARTICIPATE IN THE COLORADO PRESIDENTIAL PRIMARY ELECTION PURSUANT TO SECTION 1-4-1103 IS ENTITLED TO PARTICIPATE IN THE PRIMARY ELECTION AND SHALL HAVE A SEPARATE PARTY BALLOT. AT THE PRESIDENTIAL PRIMARY ELECTION, AN ELECTOR MAY ONLY VOTE FOR A CANDIDATE WHO REPRESENTS THE POLITICAL PARTY TO WHICH THE ELECTOR HAS DECLARED AN AFFILIATION. AN UNAFFILIATED REGISTERED ELECTOR MAY DECLARE AN AFFILIATION TO THE ELECTION JUDGES OF THE PRESIDENTIAL PRIMARY ELECTION AS PROVIDED IN SECTION 1-7-201. THE PRESIDENTIAL PRIMARY ELECTION OF ALL POLITICAL PARTIES SHALL BE HELD AT THE SAME TIME AND AT THE SAME POLLING PLACES AND SHALL BE CONDUCTED BY THE SAME ELECTION OFFICIALS.

(3) EXCEPT AS OTHERWISE PROVIDED IN THIS PART 11, ALL PRESIDENTIAL PRIMARY ELECTIONS SHALL BE CONDUCTED IN THE SAME MANNER AS OTHER PRIMARY ELECTIONS AS PROVIDED IN PART 2 OF ARTICLE 7 OF THIS TITLE 1 INSOFAR AS THE PROVISIONS OF THAT PART 2 ARE APPLICABLE, AND THE ELECTION OFFICERS FOR PRIMARY ELECTIONS SHALL HAVE THE SAME POWERS AND SHALL PERFORM THE SAME DUTIES AS THOSE PROVIDED BY LAW FOR GENERAL ELECTIONS.

(4) ALL EXPENSES INCURRED IN THE PREPARATION OR CONDUCT OF THE PRESIDENTIAL PRIMARY ELECTION SHALL BE PAID OUT OF THE TREASURY OF THE COUNTY OR STATE, AS THE CASE MAY BE, IN THE SAME MANNER AS FOR GENERAL ELECTIONS.

1-4-1103. Names on ballots. (1) THE SECRETARY OF STATE SHALL CERTIFY THE NAMES AND PARTY AFFILIATIONS OF THE CANDIDATES TO BE PLACED ON THE PRESIDENTIAL PRIMARY ELECTION BALLOTS FIFTY-FIVE DAYS BEFORE THE ELECTION IS TO BE HELD. THE ONLY CANDIDATES WHOSE NAMES ARE PLACED ON BALLOTS FOR SUCH ELECTIONS ARE THOSE CANDIDATES WHO:

(a) ARE ELIGIBLE TO RECEIVE PAYMENTS FROM THE FEDERAL PRESIDENTIAL CAMPAIGN FUND PURSUANT TO 26 U.S.C. 9003 AT THE TIME CANDIDATES' NAMES ARE TO BE CERTIFIED BY THE SECRETARY OF STATE PURSUANT TO THIS SUBSECTION (1); AND

(b) Are seeking the nomination for president of a political party whose nominee for president of the United States received at least twenty percent of the votes cast by qualified electors in Colorado at the last presidential election.

(2) The names of candidates appearing on any presidential primary ballot shall be listed in alphabetical order.

1-4-1104. Binding of delegates. (1) Any person chosen as a Colorado delegate to a national political convention at which a presidential candidate will be chosen by a political party whose candidate received at least twenty percent of the total votes cast in Colorado for presidential candidates at the last presidential election held shall, within five days of being selected as a delegate, notify the secretary of state by mail that the person is a delegate, shall include in the notice the mailing address of that person, and shall state in the notice the political party that has selected the person as a delegate and the candidates of the political party for which the person would prefer to receive a binding vote assignment in descending order of preference.

(2) The secretary of state shall tabulate the number of votes received by each candidate named on the presidential primary election ballots, both for the entire state and for each congressional district.

(3) (a) The secretary of state shall calculate:

(I) The ratio of votes received within the entire state by each candidate who is a threshold candidate with respect to this state as a whole as a percentage of the votes received by all threshold candidates of the same political party; and

(II) The ratio of votes received within each congressional district of this state by each candidate who is a threshold candidate with respect to that congressional district as a percentage of all votes received within that congressional district by all threshold candidates of the same political party.

(b) Using the calculations specified in subsection (3)(a) of this section, the secretary of state shall assign binding vote assignments to each delegate to a national political convention at which a presidential candidate is to be chosen by a political party, at least one of whose candidates is a threshold candidate with respect to this state as a whole or any congressional district within this state. To the extent mathematically possible, the secretary of state shall make the binding vote

ASSIGNMENTS SO THAT, WITHIN THE ENTIRE STATE AND EACH CONGRESSIONAL DISTRICT, DELEGATES ARE ASSIGNED TO CAST VOTES AT THE CONVENTIONS FOR THRESHOLD CANDIDATES IN THE SAME PROPORTIONS AS THE THRESHOLD CANDIDATES RECEIVED VOTES AS COMPARED TO THE VOTES RECEIVED BY ALL CANDIDATES OF THE SAME PARTY WHO ARE THRESHOLD CANDIDATES WITH RESPECT TO THE ENTIRE STATE OR A PARTICULAR CONGRESSIONAL DISTRICT.

(4) THE SECRETARY OF STATE SHALL, TO THE EXTENT PRACTICABLE, ASSIGN BINDING VOTE ASSIGNMENTS FOR CANDIDATES TO DELEGATES ACCORDING TO THE CANDIDATE PREFERENCE LIST SUPPLIED TO THE SECRETARY OF STATE BY EACH DELEGATE.

(5) THE SECRETARY OF STATE SHALL NOTIFY EACH DELEGATE OF THAT DELEGATE'S BINDING VOTE ASSIGNMENTS BY MAIL AT LEAST SEVEN DAYS BEFORE THE FIRST DAY OF THE CONVENTION THE DELEGATE HAS BEEN SELECTED TO ATTEND. AT THE CONVENTION, EACH DELEGATE ASSIGNED A BINDING VOTE ASSIGNMENT MUST VOTE AS DIRECTED ON THE BINDING VOTE ASSIGNMENT ONLY THE FIRST TIME VOTES ARE CAST AT THE ELECTION THAT WILL SERVE TO CHOOSE OFFICIALLY THE PRESIDENTIAL CANDIDATE OF THAT DELEGATE'S POLITICAL PARTY. ON SUBSEQUENT VOTES EACH DELEGATE MAY DISREGARD THE BINDING VOTE ASSIGNMENT.

(6) DELEGATES MAY BE RELEASED FROM THEIR BINDING VOTE ASSIGNMENTS FOR THE FIRST TIME VOTES ARE CAST AT THE ELECTION THAT WILL SERVE TO CHOOSE OFFICIALLY THE PRESIDENTIAL CANDIDATE OF THE DELEGATE'S POLITICAL PARTY ONLY UPON RECEIVING NOTICE FROM THE SECRETARY OF STATE STATING THAT THE SECRETARY OF STATE HAS BEEN OFFICIALLY NOTIFIED BY THAT DELEGATE'S NATIONAL POLITICAL PARTY THAT THE CANDIDATE TO WHICH THE DELEGATE IS ASSIGNED TO VOTE HAS DIRECTED THAT THE DELEGATES ARE TO BE FREED FROM THEIR ASSIGNMENTS.

SECTION 2. Refer to people under referendum. At the election held on November 3, 2016, the secretary of state shall submit this act by its ballot title to the registered electors of the state for their approval or rejection. Each elector voting at the election may cast a vote either "Yes/For" or "No/Against" on the following ballot title: "Shall the state of Colorado conduct a presidential primary election at which electors shall cast votes for qualified candidates of their political party, and the results of which shall bind delegates to national political conventions for the first vote to choose a presidential candidate at such conventions?" Except as otherwise provided in section 1-40-123, Colorado Revised Statutes, if a majority of the electors voting on the ballot title vote "Yes/For", then the act will become part of the Colorado Revised Statutes.

A.1.13 Bill to Be Referred to the Voters at the Next Election Subject to TABOR Provisions (Referendum Clause)

Note: This example includes a statutory short title and legislative declaration.

Note: Portions of the substantive provisions of this bill have been removed from this illustration. View the full text of H B22-1414 here.

A BILL FOR AN ACT

CONCERNING PROVIDING HEALTHY MEALS TO ALL PUBLIC SCHOOL STUDENTS, AND, IN CONNECTION THEREWITH, CREATING THE HEALTHY SCHOOL MEALS FOR ALL PROGRAM AND PROVIDING FUNDING FOR THE PROGRAM BY CAPPING ITEMIZED AND STANDARD STATE INCOME TAX DEDUCTIONS FOR TAXPAYERS WHO HAVE FEDERAL ADJUSTED GROSS INCOME OF $300,000 OR MORE.

Bill Summary

The bill creates the healthy school meals for all program (program) in the department of education (department) to:

- Reimburse school food authorities that choose to participate in the program (participating school food authorities) for free meals provided to students who are not eligible for free or reduced-price meals under the federal school meals programs;
- Provide local food purchasing grants to eligible participating school food authorities;
- Provide funding to participating school food authorities to increase the wages or provide stipends for individuals employed to prepare and serve food; and
- Provide assistance to participating school food authorities through the local school food purchasing technical assistance and education grant program.

The portion of the program that provides reimbursement for school meals begins operating in the 2023-24 budget year. The remaining portions of the program begin operating in the first full budget year after the state of Colorado begins participating in the federal demonstration project to use medicaid eligibility to identify students who are eligible for the federal school meals programs (demonstration project).

A participating school food authority must:

- Provide free meals to all students enrolled in the public schools that the participating school food authority serves and that participate in the national school lunch program or national school breakfast program;
- Provide to the department annual notice of participation; and

- Maximize the amount of federal reimbursement by participating in the federal community eligibility provision to identify students who are eligible for the federal school meals programs.

* * * * * * * *

Current law caps state income tax itemized deductions for taxpayers who have federal adjusted gross income of $400,000 or more at $30,000 for single filers and $60,000 for joint filers. The bill applies the cap to both itemized and standard income tax deductions for taxpayers who have federal adjusted gross income of $300,000 or more and lowers the cap to $12,000 for single filers and $16,000 for joint filers. The amount of revenue generated by the changes to the cap must be appropriated to fund the program. If the program is repealed, the changes to the cap no longer apply.

The bill takes effect only if it is approved by the voters at the November 2022 general election. This approval is a voter-approved revenue change that allows the state to retain and spend all revenue generated by the changes to the cap on state income tax deductions.
[*Note: portions of the bill summary have been removed from this illustration.*]

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** part 2 to article 82.9 of title 22 as follows:

PART 2

HEALTHY SCHOOL MEALS FOR ALL PROGRAM

22-82.9-201. Short title. THE SHORT TITLE OF THIS PART 2 IS THE "HEALTHY SCHOOL MEALS FOR ALL ACT".

22-82.9-202. Legislative declaration. (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(a) NO COLORADO CHILD SHOULD EXPERIENCE HUNGER, AND EVERY PUBLIC SCHOOL STUDENT SHOULD BENEFIT FROM ACCESS TO HEALTHY, LOCALLY PROCURED, AND FRESHLY PREPARED MEALS DURING THE SCHOOL DAY;

(b) HEALTHY SCHOOL MEALS ARE NECESSARY FOR ALL STUDENTS FOR EFFECTIVE LEARNING, AND COLORADO'S INVESTMENT IN EDUCATION SHOULD INCLUDE HEALTHY SCHOOL MEALS FOR ALL STUDENTS TO SUPPORT THE NOURISHMENT STUDENTS NEED TO ACHIEVE ACADEMIC SUCCESS;

(c) ACCESS TO HEALTHY SCHOOL MEALS SHOULD NOT CAUSE STIGMA OR STRESS FOR ANY STUDENT SEEKING AN EDUCATION;

(d) COLORADO'S HEALTHY SCHOOL MEALS PROGRAM SHOULD SUPPORT COLORADO'S FOOD SYSTEMS, INCLUDING LOCAL FARMERS AND RANCHERS;

(e) COLORADO'S HEALTHY SCHOOL MEALS PROGRAM MUST SUPPORT STUDENTS' NUTRITION

AND PROVIDE QUALITY MEALS TO BOOST THE HEALTH AND WELL-BEING OF COLORADO STUDENTS;

(f) DURING THE COVID-19 PANDEMIC, THE UNITED STATES DEPARTMENT OF AGRICULTURE EASED PROGRAM RESTRICTIONS TO ALLOW FREE MEALS TO CONTINUE TO BE AVAILABLE TO ALL STUDENTS UNIVERSALLY, ENSURING THAT ALL STUDENTS FACING HUNGER HAD ACCESS TO FOOD WHILE IN SCHOOL; AND

(g) NOW THAT STRATEGIES EXIST TO PREVENT HUNGER FOR ALL STUDENTS DURING THE SCHOOL DAY, IT IS IMPERATIVE THAT THE STATE EMBRACE THESE STRATEGIES TO MOVE TOWARD THE GOAL OF ENDING CHILD HUNGER.

(2) THE GENERAL ASSEMBLY FINDS, THEREFORE, THAT IT IS IN THE BEST INTERESTS OF THE STUDENTS OF COLORADO AND THEIR FAMILIES TO ENACT THE HEALTHY SCHOOL MEALS FOR ALL PROGRAM TO PROVIDE FREE MEALS IN PUBLIC SCHOOLS FOR ALL STUDENTS.

* * * * * * * *

22-82.9-204. Healthy school meals for all program - created - rules. (1) (a) THERE IS CREATED IN THE DEPARTMENT THE HEALTHY SCHOOL MEALS FOR ALL PROGRAM THROUGH WHICH EACH SCHOOL FOOD AUTHORITY THAT CHOOSES TO PARTICIPATE IN THE PROGRAM:

(I) OFFERS ELIGIBLE MEALS, WITHOUT CHARGE, TO ALL STUDENTS ENROLLED IN THE PUBLIC SCHOOLS SERVED BY THE PARTICIPATING SCHOOL FOOD AUTHORITY THAT PARTICIPATE IN THE NATIONAL SCHOOL LUNCH PROGRAM OR NATIONAL SCHOOL BREAKFAST PROGRAM;

(II) RECEIVES REIMBURSEMENT FOR THE MEALS AS DESCRIBED IN SUBSECTION (1)(b) OF THIS SECTION;

(III) IS ELIGIBLE TO RECEIVE A LOCAL FOOD PURCHASING GRANT PURSUANT TO SECTION 22-82.9-205, SUBJECT TO SUBSECTION (4)(b) OF THIS SECTION;

(IV) IS ELIGIBLE TO RECEIVE FUNDING PURSUANT TO SECTION 22-82.9-206 TO INCREASE WAGES OR PROVIDE STIPENDS FOR INDIVIDUALS WHOM THE PARTICIPATING SCHOOL FOOD AUTHORITY EMPLOYS TO DIRECTLY PREPARE AND SERVE FOOD FOR SCHOOL MEALS, SUBJECT TO SUBSECTION (4)(b) OF THIS SECTION; AND

(V) IS ELIGIBLE TO RECEIVE ASSISTANCE THROUGH THE LOCAL SCHOOL FOOD PURCHASING TECHNICAL ASSISTANCE AND EDUCATION GRANT PROGRAM PURSUANT TO SECTION 22-82.9-207, SUBJECT TO SUBSECTION (4)(b) OF THIS SECTION.

* * * * * * * * *

SECTION 6. In Colorado Revised Statutes, 39-22-104, **amend** (3)(p) introductory portion;

and **add** (3)(p.5) as follows:

39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - report - legislative declaration - definitions - repeal. (3) There shall be added to the federal taxable income:

(p) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3)(p.5) OF THIS SECTION, for income tax years commencing on or after January 1, 2022, for taxpayers who claim itemized deductions as defined in section 63 (d) of the internal revenue code and who have federal adjusted gross income in the income tax year equal to or exceeding four hundred thousand dollars:

(p.5) (I) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2023, FOR TAXPAYERS WHO CLAIM ITEMIZED DEDUCTIONS AS DEFINED IN SECTION 63 (d) OF THE INTERNAL REVENUE CODE OR THE STANDARD DEDUCTION AS DEFINED IN SECTION 63 (c) OF THE INTERNAL REVENUE CODE AND WHO HAVE FEDERAL ADJUSTED GROSS INCOME IN THE INCOME TAX YEAR EQUAL TO OR EXCEEDING THREE HUNDRED THOUSAND DOLLARS:

(A) FOR A TAXPAYER WHO FILES A SINGLE RETURN, THE AMOUNT BY WHICH THE ITEMIZED DEDUCTIONS DEDUCTED FROM GROSS INCOME UNDER SECTION 63 (a) OF THE INTERNAL REVENUE CODE EXCEED, OR THE STANDARD DEDUCTION DEDUCTED FROM GROSS INCOME UNDER SECTION 63 (c) OF THE INTERNAL REVENUE CODE EXCEEDS, TWELVE THOUSAND DOLLARS; AND

(B) FOR TAXPAYERS WHO FILE A JOINT RETURN, THE AMOUNT BY WHICH THE ITEMIZED DEDUCTIONS DEDUCTED FROM GROSS INCOME UNDER SECTION 63 (a) OF THE INTERNAL REVENUE CODE EXCEED, OR THE STANDARD DEDUCTION DEDUCTED FROM GROSS INCOME UNDER SECTION 63 (c) OF THE INTERNAL REVENUE CODE EXCEEDS, SIXTEEN THOUSAND DOLLARS.

(II) FOR THE 2023-24 STATE FISCAL YEAR AND STATE FISCAL YEARS THEREAFTER, THE GENERAL ASSEMBLY SHALL ANNUALLY APPROPRIATE AN AMOUNT OF GENERAL FUND REVENUE AT LEAST EQUAL TO THE AMOUNT OF REVENUE GENERATED BY THE ADDITION TO FEDERAL TAXABLE INCOME DESCRIBED IN SUBSECTION (3)(p.5)(I) OF THIS SECTION, BUT NOT MORE THAN THE AMOUNT REQUIRED, TO FULLY FUND THE DIRECT AND INDIRECT COSTS OF IMPLEMENTING THE HEALTHY SCHOOL MEALS FOR ALL PROGRAM AS PROVIDED IN SECTION 22-82.9-209. THE PROVISIONS OF SUBSECTION (3)(p.5)(I) OF THIS SECTION CONSTITUTE A VOTER-APPROVED REVENUE CHANGE, APPROVED BY THE VOTERS AT THE STATEWIDE ELECTION IN NOVEMBER OF 2022, AND THE REVENUE GENERATED BY THIS VOTER-APPROVED REVENUE CHANGE MAY BE COLLECTED, RETAINED, APPROPRIATED, AND SPENT WITHOUT SUBSEQUENT VOTER APPROVAL, NOTWITHSTANDING ANY

OTHER LIMITS IN THE STATE CONSTITUTION OR LAW. THE ADDITION TO FEDERAL TAXABLE INCOME DESCRIBED IN SUBSECTION (3)(p.5)(I) OF THIS SECTION DOES NOT APPLY FOR AN INCOME TAX YEAR THAT COMMENCES AFTER THE HEALTHY SCHOOL MEALS FOR ALL PROGRAM, OR ANY SUCCESSOR PROGRAM, IS REPEALED. UPON REPEAL OF THE HEALTHY SCHOOL MEALS FOR ALL PROGRAM, OR ANY SUCCESSOR PROGRAM, THE COMMISSIONER OF EDUCATION SHALL PROMPTLY NOTIFY THE EXECUTIVE DIRECTOR IN WRITING THAT THE PROGRAM IS REPEALED.

SECTION 7. In Colorado Revised Statutes, 22-2-112, **add** (1)(v) as follows:

22-2-112. Commissioner - duties - report - legislative declaration - repeal. (1) Subject to the supervision of the state board, the commissioner has the following duties:

(v) UPON THE REPEAL OF PART 2 OF ARTICLE 82.9 OF THIS TITLE 22 AND IN ACCORDANCE WITH SECTION 39-22-104 (3)(p.5)(II), TO PROMPTLY NOTIFY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE IN WRITING THAT THE HEALTHY SCHOOL MEALS FOR ALL PROGRAM IS REPEALED.

SECTION 8. Refer to people under referendum. At the election held on November 8, 2022, the secretary of state shall submit this act by its ballot title to the registered electors of the state for their approval or rejection. Each elector voting at the election may cast a vote either "Yes/For" or "No/Against" on the following ballot title: "Shall state taxes be increased $100,727,820 annually by a change to the Colorado Revised Statutes that, to support healthy meals for public school students, increases state taxable income only for individuals who have federal taxable income of $300,000 or more by limiting itemized or standard state income tax deductions to $12,000 for single tax return filers and $16,000 for joint tax return filers, and, in connection therewith, creating the healthy school meals for all program to provide free school meals to students in public schools; providing grants for participating schools to purchase Colorado grown, raised, or processed products, to increase wages or provide stipends for employees who prepare and serve school meals, and to create parent and student advisory committees to provide advice to ensure school meals are healthy and appealing to all students; and creating a program to assist in promoting Colorado food products and preparing school meals using basic nutritious ingredients with minimal reliance on processed products?" Except as otherwise provided in section 1-40-123, Colorado Revised Statutes, if a majority of the electors voting on the ballot title vote "Yes/For", then the act will become part of the Colorado Revised Statutes.

A.1.14 Bill to Be Referred to the Voters at the Next Election Subject to TABOR Provisions

Note: This example includes a nonstatutory legislative declaration and a safety clause.

A BILL FOR AN ACT

CONCERNING THE REFERRAL OF A BALLOT ISSUE RELATED TO THE UNDERESTIMATION OF REVENUE FROM THE TAXES ON PRODUCTS THAT CONTAIN NICOTINE IN A REQUIRED NOTICE TO VOTERS, AND, IN CONNECTION THEREWITH, REFERRING A BALLOT ISSUE TO THE VOTERS TO ALLOW THE STATE TO RETAIN AND SPEND STATE REVENUES THAT WOULD OTHERWISE NEED TO BE REFUNDED FOR EXCEEDING THE ESTIMATE IN THE BALLOT INFORMATION BOOKLET ANALYSIS FOR PROPOSITION EE AND TO ALLOW THE STATE TO MAINTAIN THE TAX RATES ON CIGARETTES, TOBACCO PRODUCTS, AND NICOTINE PRODUCTS ESTABLISHED IN PROPOSITION EE THAT WOULD OTHERWISE NEED TO BE DECREASED.

Bill Summary

The bill refers a ballot issue to the voters at the November 7, 2023, statewide election to allow the state to retain and spend state revenues that would otherwise need to be refunded for exceeding the estimate in the ballot information booklet analysis for proposition EE and to allow the state to maintain the tax rates established in proposition EE that would otherwise need to be decreased. If voters reject the ballot issue, the state will both:

- Refund $23.65 million to distributors and wholesalers in a reasonable manner determined by the department of revenue; and
- Reduce by 11.53% the tax rates of the taxes on cigarettes, tobacco products, and nicotine products created or increased by proposition EE.
- If voters approve the ballot measure:
    - The money set aside for the potential refund related to proposition EE will instead be transferred to the preschool programs cash fund and the general fund; and
    - The new tax on nicotine products and the increased taxes on cigarettes and tobacco products in proposition EE will stay at the rates required by proposition EE.

The refund or alternative spending is made or backfilled from revenue in the newly created proposition EE cash fund, which consists of $23.65 million from the preschool programs cash fund and the general fund.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) Universal access to high-quality preschools can transform the lives of children, families, and communities. The window from birth to age five is a critical moment in a child's development, with ninety percent of brain development occurring during this time.

(b) Research illustrates that children who attend high-quality preschools are, on average, eight months ahead in academic learning and about five months ahead in executive function skills, such as listening, planning, and self-control, compared to those who do not. Children who attend high-quality preschools are also more likely to graduate college and less likely to become a teenage parent or receive public assistance later in life.

(c) That is why in 2020, the general assembly enacted House Bill 20-1427, which created a new excise tax on nicotine products and increased excise taxes on cigarettes and tobacco products to fund preschool programs, among other things, and subsequently referred proposition EE, which sought voter approval for these portions of House Bill 20-1427 to take effect;

(d) 66.7% of voters approved proposition EE, with 2,134,608 votes in favor of the measure and 1,025,182 votes against it;

(e) And yet, if in state fiscal year 2021-22, the actual revenue the state received exceeded the ballot information booklet estimate for either state fiscal year spending or state revenue from the new taxes in proposition EE, then the state may be required to refund revenues related to proposition EE and reduce the new and increased taxes in proposition EE;

(f) The potential refund is because section 20 (3)(c) of article X of the state constitution, commonly known as TABOR, requires the combined amount in excess of the blue book estimates to be refunded, unless there is later voter approval to retain these excess revenues;

(g) The potential reduction in the rates of the new and increased takes in proposition EE is because paragraph (3)(c) of TABOR also requires a percentage reduction in the rate of newly created or increased taxes equal to the amount of revenue in excess of the blue book estimates as a percentage of the total state revenue from the new and increased taxes, unless there is later voter approval;

(h) On September 12, 2022, legislative council staff sent a memo to the executive committee of the legislative council and the prime sponsors of House Bill 20-1427 informing them that:

(I) The state controller had released its certification of revenues for state fiscal year

2021-22 certifying the state's total fiscal year spending without the new taxes in proposition EE; and

(II) The department of revenue and the department of treasury had released preliminary data for state fiscal year 2021-22 indicating the amount of state revenue from the new taxes in proposition EE;

(i) Although the state had less fiscal year spending without the tax increase than anticipated in the blue book estimate, the state received $208 million in state revenue from the new taxes, or $21.5 million more than the blue book estimate;

(j) Since the general assembly first became aware of state revenue from the new taxes exceeding the blue book estimates on September 12, 2022, the same day that the secretary of state certified the ballot order and content to the county clerks and recorders and after the blue book had been sent to the printer, as a practical matter, it was too late to refer a ballot issue for the general election on November 8, 2022;

(k) Consequently, this act refers a new ballot issue to the voters at the first possible election to seek the voter approval necessary to avoid a refund under TABOR and to avoid reducing the rates of the new and increased taxes;

(l) If the voters approve the new ballot issue, the refund and rate reductions will be unnecessary and the money that would have otherwise been refunded will be retained and refunded to the preschool programs cash fund and the general fund and the rates of the new and increased taxes will remain as they were initially approved by the voters;

(m) Demand for the Colorado universal preschool program for all children in the year before kindergarten has already exceeded expectations ahead of its launch for the 2023-24 school year. More than 30,000 eligible families and over 1,800 providers have already signed up to participate in the program, with months remaining in the application window; and

(n) Additional resources would allow the state to extend preschool services and additional hours to more children, setting Colorado's children on a path to success in kindergarten and beyond.

(2) Now, therefore, it is the general assembly's intent to refer a ballot issue to seek the later voter approval permitted by TABOR to avoid a refund and tax rate reduction and to conditionally require the refund, plus interest, and tax rate reduction, if the voters reject the ballot issue.

SECTION 2. In Colorado Revised Statutes, 26.5-4-209, **add** (6) as follows:

26.5-4-209. Preschool programs cash fund - created - use - repeal. (6) (a) (I) On September 1, 2023, the state treasurer shall transfer twenty-three million six hundred fifty thousand dollars from the unexpended and unencumbered money in the preschool programs cash fund to the proposition EE refund cash fund created in section 39-28-503.

(II) Notwithstanding subsection (6)(a)(I) of this section, if there is less than twenty-three million six hundred fifty thousand dollars of unexpended and unencumbered money in the preschool programs cash fund as of September 1, 2023, the state treasurer shall transfer to the proposition EE refund cash fund created in section 39-28-503:

(A) From the preschool programs cash fund, the balance of the unexpended and unencumbered money in the preschool programs cash fund; and

(B) From the general fund, an amount equal to the difference between twenty-three million six hundred fifty thousand dollars and the amount the state treasurer transfers pursuant to subsection (6)(a)(II)(A) of this section.

(b) This subsection (6) is repealed, effective July 1, 2024.

SECTION 3. In Colorado Revised Statutes, 39-28-103, **add** (2) as follows:

39-28-103. Tax levied. (2) (a) If a majority of the electors voting in the November 7, 2023, election vote "No/Against" the ballot issue referred to the voters pursuant to section 39-28-502 (1), the rates of the tax imposed by this section that are attributable to the voters' approval of the tax increase at the November 2020 statewide election are reduced as specified in section 39-28-505 (1) and in accordance with section 20 (3)(c) of article X of the state constitution.

(b) If a majority of the electors voting in the November 7, 2023, election vote "Yes/For" the ballot issue referred to the voters pursuant to section 39-28-502 (1), this subsection (2) is repealed, effective January 1, 2024.

SECTION 4. In Colorado Revised Statutes, 39-28.5-102, **add** (5) as follows:

39-28.5-102. Tax levied. (5) (a) If a majority of the electors voting in the November 7, 2023, election vote "No/Against" the ballot issue referred to the voters pursuant to section 39-28-502 (1), the rates of the tax imposed by this section that are

ATTRIBUTABLE TO THE VOTERS' APPROVAL OF THE TAX INCREASE AT THE NOVEMBER 2020 STATEWIDE ELECTION ARE REDUCED AS SPECIFIED IN SECTION 39-28-505 (1) AND IN ACCORDANCE WITH SECTION 20 (3)(c) OF ARTICLE X OF THE STATE CONSTITUTION.

(b) IF A MAJORITY OF THE ELECTORS VOTING IN THE NOVEMBER 7, 2023, ELECTION VOTE "YES/FOR" THE BALLOT ISSUE REFERRED TO THE VOTERS PURSUANT TO SECTION 39-28-502 (1), THIS SUBSECTION (5) IS REPEALED, EFFECTIVE JANUARY 1, 2024.

SECTION 5. In Colorado Revised Statutes, 39-28.6-103, **add** (4) as follows:

39-28.6-103. Tax levied. (4) (a) IF A MAJORITY OF THE ELECTORS VOTING IN THE NOVEMBER 7, 2023, ELECTION VOTE "NO/AGAINST" THE BALLOT ISSUE REFERRED TO THE VOTERS PURSUANT TO SECTION 39-28-502 (1), THE RATES OF THE TAX IMPOSED BY THIS SECTION ARE REDUCED AS SPECIFIED IN SECTION 39-28-505 (1) AND IN ACCORDANCE WITH SECTION 20 (3)(c) OF ARTICLE X OF THE STATE CONSTITUTION.

(b) IF A MAJORITY OF THE ELECTORS VOTING IN THE NOVEMBER 7, 2023, ELECTION VOTE "YES/FOR" THE BALLOT ISSUE REFERRED TO THE VOTERS PURSUANT TO SECTION 39-28-502 (1), THIS SUBSECTION (4) IS REPEALED, EFFECTIVE JANUARY 1, 2024.

SECTION 6. In Colorado Revised Statutes, **add** part 5 to article 28 of title 39 as follows:

PART 5

BALLOT ISSUE RELATED TO PROPOSITION EE

REFUNDS - RATE REDUCTIONS - PERMITTED USES

39-28-501. Definitions. AS USED IN THIS PART 5, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BALLOT ISSUE" MEANS THE BALLOT ISSUE REFERRED TO THE VOTERS PURSUANT TO SECTION 39-28-502 (1).

(2) "PROPOSITION EE REFUND CASH FUND" OR "FUND" MEANS THE CASH FUND CREATED IN SECTION 39-28-503.

(3) "PROPOSITION EE TAX REVENUE" MEANS THE ACTUAL REVENUE FROM PROPOSITION EE TAXES RECEIVED BY THE DEPARTMENT.

(4) "PROPOSITION EE TAXES" MEANS THE TAX IMPOSED BY SECTION 39-28.6-103 AND THE TAX INCREASES IMPOSED BY SECTIONS 39-28-103 AND 39-28.5-102 THAT WERE APPROVED BY VOTERS AT THE NOVEMBER 2020 STATEWIDE ELECTION.

39-28-502. Ballot issue - proposition EE - later voter approval. (1) AT THE ELECTION

HELD ON NOVEMBER 7, 2023, THE SECRETARY OF STATE SHALL SUBMIT TO THE REGISTERED ELECTORS OF THE STATE FOR THEIR APPROVAL OR REJECTION THE FOLLOWING BALLOT ISSUE: "WITHOUT RAISING TAXES, MAY THE STATE RETAIN AND SPEND REVENUES FROM TAXES ON CIGARETTES, TOBACCO, AND OTHER NICOTINE PRODUCTS AND MAINTAIN TAX RATES ON CIGARETTES, TOBACCO, AND OTHER NICOTINE PRODUCTS AND USE THESE REVENUES TO INVEST TWENTY-THREE MILLION SIX HUNDRED FIFTY THOUSAND DOLLARS TO ENHANCE THE VOLUNTARY COLORADO PRESCHOOL PROGRAM AND MAKE IT WIDELY AVAILABLE FOR FREE INSTEAD OF REDUCING THESE TAX RATES AND REFUNDING REVENUES TO CIGARETTE WHOLESALERS, TOBACCO PRODUCT DISTRIBUTORS, NICOTINE PRODUCTS DISTRIBUTORS, AND OTHER TAXPAYERS, FOR EXCEEDING AN ESTIMATE INCLUDED IN THE BALLOT INFORMATION BOOKLET FOR PROPOSITION EE?"

(2) IF A MAJORITY OF THE ELECTORS VOTING ON THE BALLOT ISSUE VOTE "YES/FOR", THIS CONSTITUTES LATER VOTER APPROVAL TO AVOID THE POTENTIAL REFUND AND RATE REDUCTION REQUIRED BY SECTION 20 (3)(c) OF ARTICLE X OF THE STATE CONSTITUTION.

(3) FOR PURPOSES OF SECTION 1-5-407 (5)(b), THE BALLOT ISSUE IS A PROPOSITION. SECTION 1-40-106 (3)(d) DOES NOT APPLY TO THE BALLOT ISSUE.

39-28-503. Proposition EE refund cash fund. THE PROPOSITION EE REFUND CASH FUND IS HEREBY CREATED IN THE STATE TREASURY. IN ACCORDANCE WITH SECTION 26.5-4-209 (6), THE FUND CONSISTS OF TWENTY-THREE MILLION SIX HUNDRED FIFTY THOUSAND DOLLARS TRANSFERRED FROM THE PRESCHOOL PROGRAMS CASH FUND CREATED IN SECTION 26.5-4-209 AND, IF APPLICABLE, THE GENERAL FUND. THE MONEY IN THE FUND IS RESTRICTED FROM USE UNTIL JANUARY 1, 2024, AND IS NOT INCLUDED IN THE YEAR-END BALANCE REQUIRED BY SECTION 24-75-201.1 (1)(d)(XXIII).

39-28-504. Approval of ballot issue - rejection of ballot issue - refunds. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) IF A MAJORITY OF THE VOTERS VOTING ON THE BALLOT ISSUE VOTE "NO/AGAINST", THE STATE WILL BE REQUIRED BY SECTION 20 (3)(c) OF ARTICLE X OF THE STATE CONSTITUTION TO MAKE REFUNDS; AND

(b) THE AMOUNT OF THE REFUND WOULD BE TWENTY-THREE MILLION SIX HUNDRED FIFTY THOUSAND DOLLARS, WHICH IS THE AMOUNT BY WHICH THE PROPOSITION EE TAX REVENUE IN STATE FISCAL YEAR 2021-22 EXCEEDED THE BALLOT INFORMATION BOOKLET ESTIMATE OF REVENUE FROM THE PROPOSITION EE TAX INCREASE FOR THAT SAME FISCAL YEAR PLUS INTEREST.

(2) The department shall determine a reasonable method to distribute the revenue in the proposition EE refund cash fund created in section 39-28-503 in accordance with section 20 (3)(c) of article X of the state constitution. This method must include the distribution of money from the proposition EE refund cash fund to taxpayers who paid the proposition EE taxes.

(3) (a) If a majority of the electors voting on the ballot issue vote "No/Against", then on or before June 30, 2024, the state treasurer shall refund the money in the proposition EE refund cash fund in the manner determined by the department pursuant to subsection (2) of this section.

(b) If a majority of the electors voting on the ballot issue vote "Yes/For", then, as soon as possible thereafter, the state treasurer shall transfer the balance in the proposition EE refund cash fund to the preschool programs cash fund created in section 26.5-4-209 and the general fund, in the same proportion as the state treasurer transferred money from the preschool programs cash fund and the general fund to the proposition EE refund cash fund.

39-28-505. Rejection of ballot issue - rate reduction. (1) If a majority of the electors voting on the ballot issue vote "No/Against", then the proposition EE taxes shall be reduced in a manner determined by the department so that the proposition EE taxes are reduced by eleven and fifty-three one-hundredths percent. This percentage is equal to the amount by which proposition EE tax revenue exceeded one hundred eighty-six million five hundred thousand dollars, with the excess amount divided by one hundred eighty-six million five hundred thousand dollars.

(2) If a majority of the electors voting on the ballot issue vote "Yes/For", then the proposition EE taxes shall remain at the same rates as established by proposition EE.

39-28-506. Repeal of part. If a majority of the electors voting on the ballot issue vote "Yes/For", then this part 5 is repealed, effective July 1, 2024.

SECTION 7. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.

A.2 Concurrent Resolution Examples

A.2.1 Concurrent Resolution to Amend the State Constitution

SENATE CONCURRENT RESOLUTION 24-002

SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF COLORADO AN AMENDMENT TO THE COLORADO CONSTITUTION CONCERNING THE MODIFICATION OF CERTAIN DEADLINES IN CONNECTION WITH SPECIFIED ELECTIONS.

Resolution Summary

The state constitution specifies certain filing deadlines in connection with the people's power of initiative and referendum and with judges who want to retain their offices for another term. To facilitate an additional week between the secretary of state's deadline to certify ballot order and content pursuant to law and election officials' deadline to transmit ballots pursuant to the federal "Uniformed and Overseas Citizens Absentee Voting Act", the concurrent resolution submits a constitutional amendment to the voters of the state at the 2024 general election that will, if approved:

- Change the date by which initiative petitions must be filed with the secretary of state from at least 3 months before the general election at which they are to be voted on to at least 3 months and one week before that election;
- Change the date by which referendum petitions must be filed with the secretary of state from not more than 90 days after the final adjournment of the session of the general assembly that enacted the bill on which the referendum is demanded to not more than 83 days after the final adjournment of that session;
- Change the date by which the nonpartisan research staff of the general assembly shall publish the text and title of every measure from at least 15 days prior to the final date of voter registration for the election to 45 days before the election; and
- Change the period during which a justice of the supreme court or a judge of any other court must file with the secretary of state a declaration of intent to run for another term from not more than 6 months or less than 3 months prior to the general election before the expiration of the judge's term to not more than 6 months and one week or less than 3 months and one week before that general election.

Be It Resolved by the Senate of the Seventy-fourth General Assembly of the State of Colorado, the House of Representatives concurring herein:

SECTION 1. At the election held on November 5, 2024, the secretary of state shall submit

to the registered electors of the state the ballot title set forth in section 2 for the following amendments to the state constitution:

In the constitution of the state of Colorado, section 1 of article V, **amend** (2), (3), and (7.3) as follows:

Section 1. General assembly - initiative and referendum. (2) The first power hereby reserved by the people is the initiative, and signatures by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of secretary of state at the previous general election shall be required to propose any measure by petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions for state legislation and amendments to the constitution, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state at least three months AND ONE WEEK before the general election at which they are to be voted upon.

(3) The second power hereby reserved is the referendum, and it may be ordered, except as to laws necessary for the immediate preservation of the public peace, health, or safety, and appropriations for the support and maintenance of the departments of state and state institutions, against any act or item, section, or part of any act of the general assembly, either by a petition signed by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of the secretary of state at the previous general election or by the general assembly. Referendum petitions, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state not more than ~~ninety days~~ EIGHTY-THREE DAYS after the final adjournment of the session of the general assembly that passed the bill on which the referendum is demanded. The filing of a referendum petition against any item, section, or part of any act shall not delay the remainder of the act from becoming operative.

(7.3) Before any election at which the voters of the entire state will vote on any initiated or referred constitutional amendment or legislation, the nonpartisan research staff of the general assembly shall cause to be published the text and title of every such measure. Such publication shall be made at least one time in at least one legal publication of general circulation in each county of the state and shall be made at least ~~fifteen days prior to the final date of voter registration for~~ FORTY-FIVE DAYS BEFORE the election. The form and manner of publication shall be as prescribed by law and shall ensure a reasonable opportunity for the voters statewide to

become informed about the text and title of each measure.

In the constitution of the state of Colorado, **amend** section 25 of article VI as follows:

Section 25. Election of justices and judges. A justice of the supreme court or a judge of any other court of record, who shall desire to retain ~~his~~ THE JUSTICE'S OR JUDGE'S judicial office for another term after the expiration of ~~his~~ THE JUSTICE'S OR JUDGE'S then term of office shall file with the secretary of state, not more than six months AND ONE WEEK nor less than three months AND ONE WEEK prior to the general election next prior to the expiration of ~~his~~ THE JUSTICE'S OR JUDGE'S then term of office, a declaration of ~~his~~ THE JUSTICE'S OR JUDGE'S intent to run for another term. Failure to file such a declaration within the time specified ~~shall create~~ CREATES a vacancy in that office at the end of ~~his~~ THE JUSTICE'S OR JUDGE'S then term of office. Upon the filing of such a declaration, a question shall be placed on the appropriate ballot at such general election, as follows:

"Shall Justice (Judge) .... of the Supreme (or other) Court be retained in office? YES/..../NO/..../." If a majority of those voting on the question vote "Yes", the justice or judge is thereupon elected to a succeeding full term. If a majority of those voting on the question vote "No", this will cause a vacancy to exist in that office at the end of his then present term of office.

In the case of a justice of the supreme court or any intermediate appellate court, the electors of the state at large; in the case of a judge of a district court, the electors of that judicial district; and in the case of a judge of the county court or other court of record, the electors of that county; shall vote on the question of retention in office of the justice or judge.

SECTION 2. Each elector voting at the election may cast a vote either "Yes/For" or "No/Against" on the following ballot title: "Shall there be an amendment to the Colorado constitution concerning the modification of certain deadlines in connection with specified elections?"

SECTION 3. Except as otherwise provided in section 1-40-123, Colorado Revised Statutes, if at least fifty-five percent of the electors voting on the ballot title vote "Yes/For", then the amendment will become part of the state constitution.

A2.2 Concurrent Resolution Amending the State Constitution and Containing a Nonconstitutional Legislative Declaration

HOUSE CONCURRENT RESOLUTION 04-1005

SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF COLORADO AN AMENDMENT TO THE COLORADO CONSTITUTION CONCERNING REFORM OF THE STATE CIVIL SERVICE SYSTEM, AND, IN CONNECTION THEREWITH, MODIFYING THE MERIT PRINCIPLE, EXEMPTING CERTAIN POSITIONS FROM THE SYSTEM, MODIFYING THE NUMBER OF ELIGIBLE APPLICANTS FROM WHICH AN APPOINTMENT IS TO BE MADE, MODIFYING THE RESIDENCY REQUIREMENT, EXPANDING THE DURATION OF TEMPORARY EMPLOYMENT, SPECIFYING THE RULE-MAKING AUTHORITY OF THE STATE PERSONNEL BOARD AND THE STATE PERSONNEL DIRECTOR, AUTHORIZING A MODIFICATION TO THE VETERANS' PREFERENCE CALCULATION, AND REPEALING THE REQUIREMENT THAT THE STATE AUDITOR'S STAFF BE INCLUDED IN THE STATE PERSONNEL SYSTEM.

Resolution Summary

Reforms the state civil service system in the following respects:

Merit principle

- Retains the merit principle and specifies that appointments and promotions in the state personnel system are to be made according to merit as ascertained by comparative assessments of qualifications.
- Eliminates reference to competitive tests to measure competence...

[Note: The remainder of the bill summary has been removed from this illustration.]

WHEREAS, The clauses appearing before Section 1 of this measure express the intent of the general assembly in adopting the measure and are intended to be included as part of the text of the measure for purposes of publication pursuant to section 1-40-124, Colorado Revised Statutes, and the ballot information booklet pursuant to section 1 (7.5) of article V of the state constitution and section 1-40-124.5, Colorado Revised Statutes; and

WHEREAS, Colorado voters adopted a constitutional system of public employment that requires consideration of a person's qualifications and performance instead of political preferences, which has served the state of Colorado well; and

WHEREAS, The purpose of the state personnel system is to assure that a well-qualified

workforce is serving the people of Colorado, and to further that purpose, the system must strike an appropriate balance between preserving the core principles of a merit-based system and providing the flexibility demanded by modern circumstances; and

WHEREAS, It is the intent of the general assembly to ensure that the protections of the state personnel system are consistent with the nondiscrimination provision of section 29 of article II of the state constitution, and that the existing preference for veterans of the armed forces not be diminished but be updated to conform with other constitutional changes; now, therefore,

Be It Resolved by the House of Representatives of the Sixty-fourth General Assembly of the State of Colorado, the Senate concurring herein:

SECTION 1. At the election held on November 4, 2004, the secretary of state shall submit to the registered electors of the state the ballot title set forth in section 2 for the following amendment to the state constitution:

In the constitution of the state of Colorado, **amend** section 13 of article XII as follows:

Section 13. Personnel system of state - merit system. (1) Appointments and promotions to offices and employments in the STATE personnel system ~~of the state~~ shall be made according to merit, ~~and~~ ~~fitness~~ to be ascertained by ~~competitive tests of competence~~ COMPARATIVE ASSESSMENTS OF QUALIFICATIONS AS PROVIDED BY LAW, without regard to race, creed, ~~or~~ color, SEX, or political affiliation.

(2) The personnel system of the state shall comprise all appointive public officers and employees of the state, except the following: ~~Members of the public utilities commission, the industrial commission of Colorado, the state board of land commissioners, the Colorado tax commission, the state parole board, and the state personnel board~~ HEADS OF PRINCIPAL DEPARTMENTS; members of any board or commission; ~~serving without compensation except for per diem allowances provided by law and reimbursement of expenses; the~~ employees in the offices of the governor and the lieutenant governor AND NOT MORE THAN FOUR EMPLOYEES IN THE OFFICES OF THE HEADS OF PRINCIPAL DEPARTMENTS, ALL OF whose functions are confined to such offices...

[Note: The remainder of this concurrent resolution has been removed from this illustration.]

A.2.3 Concurrent Resolution Amending More than One Article of the Constitution

HOUSE CONCURRENT RESOLUTION 04-1003

SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF COLORADO AMENDMENTS TO THE COLORADO CONSTITUTION CONCERNING STATE SPENDING, AND, IN CONNECTION THEREWITH, REPLACING THE REQUIREMENT THAT STATEWIDE BASE PER PUPIL FUNDING FOR PRESCHOOL, PRIMARY, AND SECONDARY EDUCATION AND TOTAL STATE FUNDING FOR ALL CATEGORICAL PROGRAMS FOR EACH OF THE TEN STATE FISCAL YEARS STARTING WITH THE 2001-02 STATE FISCAL YEAR INCREASE BY AT LEAST THE RATE OF INFLATION PLUS ONE PERCENTAGE POINT WITH A REQUIREMENT THAT THE GENERAL ASSEMBLY SET THE STATEWIDE BASE PER PUPIL FUNDING AND TOTAL STATE FUNDING FOR ALL CATEGORICAL PROGRAMS AT NO LESS THAN THE LEVELS OF THE STATEWIDE BASE PER PUPIL FUNDING AND TOTAL STATE FUNDING FOR ALL CATEGORICAL PROGRAMS FOR THE PRIOR STATE FISCAL YEAR IN ANY STATE FISCAL YEAR THAT FOLLOWS A CALENDAR YEAR IN WHICH STATE GENERAL FUND REVENUES DID NOT INCREASE BY AT LEAST THE SUM OF INFLATION PLUS THE PERCENTAGE CHANGE IN STATE POPULATION FOR THE PRIOR CALENDAR YEAR; REPLACING THE REQUIREMENT THAT STATEWIDE BASE PER PUPIL FUNDING FOR PRESCHOOL, PRIMARY, AND SECONDARY EDUCATION AND TOTAL STATE FUNDING FOR ALL CATEGORICAL PROGRAMS FOR STATE FISCAL YEARS STARTING WITH THE 2011-12 STATE FISCAL YEAR INCREASE BY THE RATE OF INFLATION WITH A REQUIREMENT THAT THE GENERAL ASSEMBLY SET THE STATEWIDE BASE PER PUPIL FUNDING AND TOTAL STATE FUNDING FOR ALL CATEGORICAL PROGRAMS AT NO LESS THAN THE LEVELS OF THE STATEWIDE BASE PER PUPIL FUNDING FOR PRESCHOOL, PRIMARY, AND SECONDARY EDUCATION AND TOTAL STATE FUNDING FOR ALL CATEGORICAL PROGRAMS FOR THE PRIOR FISCAL YEAR; INCREASING THE STATE FISCAL YEAR SPENDING LIMITS FOR THE 2005-06 AND 2006-07 STATE FISCAL YEARS BY ONE PERCENTAGE POINT EACH; INCLUDING EACH ONE PERCENTAGE POINT INCREASE IN THE STATE FISCAL YEAR SPENDING BASE FOR THE PURPOSE OF CALCULATING SUBSEQUENT YEARS' STATE FISCAL YEAR SPENDING LIMITS EVEN IF STATE REVENUES DECLINE; AND REQUIRING

SOME OF THE ADDITIONAL MONEY UNDER THE INCREASED STATE FISCAL YEAR SPENDING LIMITS TO BE EXPENDED FIRST TO COMPENSATE LOCAL GOVERNMENTS FOR REVENUE LOSSES FROM THE SENIOR PROPERTY TAX EXEMPTION, NEXT TO PROVIDE A STATE CREDIT AGAINST BUSINESS PERSONAL PROPERTY TAXES, AND LASTLY FOR REFUNDS TO TAXPAYERS.

Resolution Summary

The concurrent resolution amends section 17 of article IX of the Colorado constitution (Amendment 23) as follows:

- Replaces the requirement that statewide base per pupil funding for preschool, primary, and secondary education for each of the 10 state fiscal years starting with the 2001-02 state fiscal year increase by at least the rate of inflation plus one percentage point with a requirement that the general assembly set the statewide base per pupil funding and total state funding for all categorical programs at no less than the levels of the statewide base per pupil funding and total state funding for all categorical programs for the prior state fiscal year in any state fiscal year that follows a calendar year in which state general fund revenues did not increase by at least the sum of inflation plus the percentage change in state population for the prior calendar year.
- Replaces the requirement that statewide base per pupil funding for preschool, primary, and secondary education for state fiscal years starting with the 2011-12 state fiscal year increase by the rate of inflation with a requirement that the general assembly set the statewide base per pupil funding and total state funding for all categorical programs at no less than the levels of the statewide base per pupil funding for preschool, primary, and secondary education and total state funding for all categorical programs for the prior fiscal year.

The concurrent resolution amends section 20 of article X of the Colorado constitution (TABOR) as follows:

- Increases the state fiscal year spending limits for the 2005-06 and 2006-07 state fiscal years by one percentage point each.
- Includes each one percentage point increase in the state fiscal year spending base for the purpose of calculating subsequent years' state fiscal year spending limits even if state revenues decline.
- Requires additional money under the increased state fiscal year spending limits to be expended first to compensate local governments for revenue losses from the senior property tax exemption, next to provide a state credit against business personal property taxes, and lastly for refunds to taxpayers if the amount of the additional money is at least 50% of the amount of compensation owed to the local governments.

Be It Resolved by the House of Representatives of the Sixty-fourth General Assembly of the State of Colorado, the Senate concurring herein:

SECTION 1. At the election held on November 4, 2004, the secretary of state shall submit to the registered electors of the state the ballot title set forth in section 2 for the following amendment to the state constitution:

In the constitution of the state of Colorado, section 17 of article IX, **amend** (1) as follows:

Section 17. Education - Funding. (1) **Purpose.** (a) (I) EXCEPT AS PROVIDED IN SUBSECTION (1)(b) OF THIS SECTION, STARTING in state fiscal year 2001-2002 ~~through state fiscal year 2010-2011~~ FOR A PERIOD OF TEN CONSECUTIVE STATE FISCAL YEARS, the statewide base per pupil funding, as defined by the Public School Finance Act of 1994, article 54 of title 22, Colorado Revised Statutes on the effective date of this section, for public education from preschool through the twelfth grade and total state funding for all categorical programs shall grow annually at least by the rate of inflation plus an additional one percentage point.

[Note: The remainder of this portion of SECTION 1 has been removed from this illustration.]

In the constitution of the state of Colorado, section 20 of article X, **amend** (7)(a); and **add** (7)(a.5) as follows:

Section 20. The Taxpayer's Bill of Rights. (7) Spending limits. (a) EXCEPT AS OTHERWISE PROVIDED IN (7)(a.5), the maximum annual percentage change in state fiscal year spending equals inflation plus the percentage change in state population in the prior calendar year, adjusted for revenue changes approved by voters after 1991. Population shall be determined by annual federal census estimates and such number shall be adjusted every decade to match the federal census.

[Note: The remainder of this portion of SECTION 1 has been removed from this illustration.]

SECTION 2. Each elector voting at the election may cast a vote either "Yes/For" or "No/Against" on the following ballot title: "Shall there be amendments to the Colorado constitution concerning state spending, and, in connection therewith, replacing the requirement that statewide base per pupil funding for preschool, primary, and secondary education and total state funding for all categorical programs for each of the ten state fiscal years starting with the 2001-02 state fiscal year increase by at least the rate of inflation plus one percentage point with a requirement that the general assembly set the statewide base per pupil funding and total state funding for all categorical programs at no less than the levels of the statewide base per pupil

funding and total state funding for all categorical programs for the prior state fiscal year in any state fiscal year that follows a calendar year in which state general fund revenues did not increase by at least the sum of inflation plus the percentage change in state population for the prior calendar year; replacing the requirement that statewide base per pupil funding for preschool, primary, and secondary education and total state funding for all categorical programs for state fiscal years starting with the 2011-12 state fiscal year increase by the rate of inflation with a requirement that the general assembly set the statewide base per pupil funding and total state funding for all categorical programs at no less than the levels of the statewide base per pupil funding for preschool, primary, and secondary education and total state funding for all categorical programs for the prior fiscal year; increasing the state fiscal year spending limits for the 2005-06 and 2006-07 state fiscal years by one percentage point each; including each one percentage point increase in the state fiscal year spending base for the purpose of calculating subsequent years' state fiscal year spending limits even if state revenues decline; and requiring some of the additional money under the increased state fiscal year spending limits to be expended first to compensate local governments for revenue losses from the senior property tax exemption, next to provide a state credit against business personal property taxes, and lastly for refunds to taxpayers?"

SECTION 3. Except as otherwise provided in section 1-40-123, Colorado Revised Statutes, if a majority of the electors voting on the ballot title vote "Yes/For", then the amendment will become part of the state constitution.

A.2.4 Concurrent Resolution Contingent on the Passage of Another Concurrent Resolution

SENATE CONCURRENT RESOLUTION 04-009

SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF COLORADO AN AMENDMENT TO THE COLORADO CONSTITUTION CONCERNING MODIFICATIONS TO THE REQUIRED INCREASES IN CERTAIN STATE EDUCATION FUNDING, AND, IN CONNECTION THEREWITH, REQUIRING THE STATEWIDE BASE PER PUPIL FUNDING AND THE TOTAL STATE FUNDING FOR ALL CATEGORICAL PROGRAMS TO ANNUALLY INCREASE BY THE LESSER OF INFLATION OR THE PERCENTAGE CHANGE IN GENERAL FUND REVENUES AND REQUIRING AN ADDITIONAL ONE PERCENT INCREASE IN THE STATEWIDE BASE PER PUPIL FUNDING AND TOTAL STATE FUNDING FOR ALL CATEGORICAL PROGRAMS WHEN STATE REVENUES EXCEED THE LIMITATION ON STATE FISCAL YEAR SPENDING.

Resolution Summary

The concurrent resolution amends section 17 (1) of article IX of the state constitution (amendment 23) to eliminate the requirement that, through the 2010-11 state fiscal year, the statewide base per pupil funding and the total state funding for all categorical programs increase by at least the rate of inflation plus one percent, and that for the 2011-12 and future state fiscal years, the statewide base per pupil funding and total categorical program funding increase by at least the rate of inflation. Instead, the concurrent resolution requires the following:

- That, for the 2005-06 and future state fiscal years, the statewide base per pupil funding and total categorical program funding increase by the lesser of the rate of inflation for the prior calendar year or the percentage change in general fund revenues collected by the state in the prior 2 calendar years;
- That, for the 2005-06 state fiscal year and the next 5 state fiscal years, the statewide base per pupil funding and total categorical program funding increase by one percent if state revenues exceed the limitation on state fiscal year spending imposed by the taxpayer's bill of rights (TABOR);
- Suspension of the one percent increase requirement if state revenues do not exceed the state fiscal year spending limit; and
- If the suspension is triggered, extension of the period of the required one percent increase in order to ensure the increase requirements apply for a total of 6 state fiscal years.

The concurrent resolution amends subsection (4)(b) of amendment 23 to preclude the use of money in the state education fund to comply with the one percent increase requirement.

The concurrent resolution specifies that the measure only takes effect if a specified measure amending TABOR is enacted by the general assembly and approved by the voters.

Be It Resolved by the Senate of the Sixty-fourth General Assembly of the State of Colorado, the House of Representatives concurring herein:

SECTION 1. Except as otherwise provided in section 3 of this concurrent resolution, at the election held on November 4, 2004, the secretary of state shall submit to the registered electors of the state the ballot title set forth in section 2 for the following amendment to the state constitution:

In the constitution of the state of Colorado, section 17 of article IX, **amend** (1) and (4)(b) as follows:

Section 17. Education - Funding. (1) **Purpose.** (a) ~~In state fiscal year 2001-2002 through state fiscal year 2010-2011, the statewide~~....

[Note: The remainder of SECTION 1 has been removed from this illustration.]

SECTION 2. Each elector voting at the election may cast a vote either "Yes/For" or "No/Against" on the following ballot title: "Shall there be an amendment to the Colorado constitution concerning modifications to the required increases in certain state education funding, and, in connection therewith, requiring the statewide base per pupil funding and the total state funding for all categorical programs to annually increase by the lesser of inflation or the percentage change in general fund revenues, and requiring an additional one percent increase in the statewide base per pupil funding and total state funding for all categorical programs when state revenues exceed the limitation on state fiscal year spending?"

SECTION 3. Notwithstanding the provisions of section 1 of this concurrent resolution, such ballot title shall not be submitted to the registered electors of the state, for their approval or rejection, unless the General Assembly approved Senate Concurrent Resolution 04-_____ at the Second Regular Session of the Sixty-fourth General Assembly.

SECTION 4. Except as otherwise provided in section 1-40-123, Colorado Revised Statutes, if a majority of the electors voting on the ballot title vote "Yes/For", and if a majority of the electors voting on the question submitted pursuant to Senate Concurrent Resolution 04-____ , adopted at the Second Regular Session of the Sixty-fourth General Assembly, shall have voted "Yes/For", then the amendment will become part of the state constitution.

A.3 Resolution and Memorial Examples

A.3.1 Joint Resolution to Amend the Joint Rules

SENATE JOINT RESOLUTION 24-001

CONCERNING CHANGES TO THE DEADLINE SCHEDULE.

Be It Resolved by the Senate of the Seventy-fourth General Assembly of the State of Colorado, the House of Representatives concurring herein:

That in the Joint Rules of the Senate and House of Representatives, Joint Rule No. 23, **amend** (a)(1) as follows:

23. DEADLINE SCHEDULE

(a) (1) ***Deadline schedule.*** For the purposes of organizing the legislative session, the schedule for the enactment of legislation shall be as follows:

5 days prior to 1st day	Deadline for filing one of each member's three bills requested prior to December 1 or December 15 pursuant to paragraph (2) of this subsection (a) and Joint Rule 24 (b)(1)(A) with the house of introduction for printing, distribution to Legislative Council staff for preparation of fiscal notes, and introduction on the 1st day.
1st day	Deadline for the introduction of the bills required to be filed 5 days prior to the 1st day.
	Deadline for introduction of any bills to increase the number of judges.
~~3rd day~~ 10TH DAY	Deadline for introduction of the two remaining Senate bills requested prior to December 1 or December 15 pursuant to paragraph (2) of this subsection (a) and Joint Rule 24 (b)(1)(A).
~~7th day~~ 17TH DAY	Deadline for introduction of the two remaining House bills requested prior to December 1 or December 15 pursuant to paragraph (2) of this subsection (a) and Joint Rule 24 (b)(1)(A).
	Deadline for all remaining bill draft requests to the Office of Legislative Legal Services.
~~17th day~~ 24TH DAY	Final deadline for introduction of Senate bills, except for supplemental appropriation bills recommended by the Joint Budget Committee and the long appropriation bill.
27TH DAY	DEADLINE FOR INTRODUCTION OF SUPPLEMENTAL APPROPRIATION BILLS RECOMMENDED BY THE JOINT BUDGET COMMITTEE.
~~22nd day~~	Final deadline for introduction of House bills, except for supplemental

31ST DAY	appropriation bills recommended by the Joint Budget Committee and the long appropriation bill.
~~27th day~~	~~Deadline for introduction of supplemental appropriation bills recommended by the Joint Budget Committee.~~
~~30th day~~ 45TH DAY	Deadline for House committees of reference, other than the House Appropriations Committee, to report House bills introduced on or before the 7th 17th legislative day.
~~37th day~~ 52ND DAY	Deadline for Senate committees of reference, other than the Senate Appropriations Committee, to report Senate bills.
~~44th day~~ 59TH DAY	Deadline for House committees of reference, other than the House Appropriations Committee, to report remaining House bills.
	DEADLINE FOR FINAL PASSAGE OF ANY BILL THAT INCREASES THE NUMBER OF JUDGES.
~~50th day~~	~~Deadline for final passage of Senate bills in the Senate.*~~
	~~Deadline for final passage of House Bills in the House.*~~
~~59th day~~	~~Deadline for final passage of any bill that increases the number of judges.~~
66TH DAY	DEADLINE FOR FINAL PASSAGE OF SENATE BILLS IN THE SENATE.*
	DEADLINE FOR FINAL PASSAGE OF HOUSE BILLS IN THE HOUSE.*
~~73rd day~~	~~Deadline for committees of reference, other than the Appropriations Committees and the Legislative Council, to report bills originating in the other house.~~
76th day	Deadline for introduction of the long appropriation bill in the house of origin which shall be the House of Representatives in even-numbered years and the Senate in odd-numbered years.
80th day	Deadline for final passage of the long appropriation bill in the house of origin.
~~83rd day~~	~~Deadline in even-numbered years for final passage in the Senate of all bills originating in the House of Representatives.*~~
	~~Deadline in odd-numbered years for final passage in the House of Representatives of all bills originating in the Senate.*~~
87th day	Deadline to request resolutions and memorials.
	Deadline for final passage of the long appropriation bill in the second house.

~~Deadline for committees of reference and the Appropriations Committee in house of introduction to report bills creating statutory committees with legislative members.~~

90th day — Deadline to introduce resolutions and memorials.

~~Deadline in odd-numbered years for final passage in the Senate of all bills originating in the House of Representatives.*~~

~~Deadline in even-numbered years for final passage in the House of Representatives of all bills originating in the Senate.*~~

94th day — Deadline for adoption of the conference committee report on the long appropriation bill.

~~Deadline for the Appropriations Committee in house of introduction to report bills referred to Appropriations Committee.~~

~~Deadline for final passage in house of introduction of all bills creating statutory committees with legislative members.~~

DEADLINE FOR COMMITTEES OF REFERENCE, OTHER THAN THE APPROPRIATIONS COMMITTEES AND THE LEGISLATIVE COUNCIL, TO REPORT BILLS ORIGINATING IN THE OTHER HOUSE.

100th day — Deadline to introduce bills unless otherwise authorized in accordance with subsection (h) of this rule.

101st day — ~~Deadline for final passage in house of introduction of all bills referred to Appropriations Committee in that house.~~

~~Deadline for committees of reference in second house to report bills creating statutory committees with legislative members to the Legislative Council in that house.~~

DEADLINE FOR FINAL PASSAGE, INCLUDING ANY CONFERENCE COMMITTEE REPORT, FOR ANY BILL PRESCRIBING ALL OR A SUBSTANTIAL PORTION OF THE TOTAL FUNDING FOR PUBLIC SCHOOLS PURSUANT TO THE "PUBLIC SCHOOL FINANCE ACT OF 1994", ARTICLE 54 OF TITLE 22, COLORADO REVISED STATUTES.

105TH DAY — DEADLINE FOR FINAL PASSAGE IN THE SENATE OF ALL BILLS ORIGINATING IN THE HOUSE OF REPRESENTATIVES.*

DEADLINE FOR FINAL PASSAGE IN THE HOUSE OF REPRESENTATIVES OF ALL BILLS ORIGINATING IN THE SENATE.*

~~107th day~~ — ~~Deadline for committees of reference in second house to report bills referred to the Appropriations Committee in that house.~~

108th day — Deadline for Legislative Council to report all bills referred to it pursuant

to section 2-3-301 (5), Colorado Revised Statutes.

DEADLINE FOR THE APPROPRIATIONS COMMITTEE IN HOUSE OF INTRODUCTION TO REPORT BILLS REFERRED TO APPROPRIATIONS COMMITTEE.

~~111th day~~ ~~Deadline for Appropriations Committee in second house to report bills referred to Appropriations Committee.~~

113TH DAY DEADLINE FOR FINAL PASSAGE IN HOUSE OF INTRODUCTION OF ALL BILLS REFERRED TO APPROPRIATIONS COMMITTEE IN THAT HOUSE.

~~114th day~~ ~~Deadline for final passage in second house of all bills referred to Appropriations Committee in that house.~~

115TH DAY DEADLINE FOR COMMITTEES OF REFERENCE IN SECOND HOUSE TO REPORT BILLS REFERRED TO THE APPROPRIATIONS COMMITTEE IN THAT HOUSE.

118th day If there has been adjournment to a day certain, reconvene for adjournment sine die unless the joint resolution for adjournment to a day certain specifies another day for reconvening.

DEADLINE FOR APPROPRIATIONS COMMITTEE IN SECOND HOUSE TO REPORT BILLS REFERRED TO APPROPRIATIONS COMMITTEE.

120TH DAY DEADLINE FOR FINAL PASSAGE IN SECOND HOUSE OF ALL BILLS REFERRED TO APPROPRIATIONS COMMITTEE IN THAT HOUSE.

**All bills in the Appropriations Committee in either house and all bills in the Legislative Council acting as a committee of reference in the second house on the day of the asterisked final passage deadline are excluded from the final passage deadline and from other deadlines specified in this Joint Rule until the deadlines for passing bills in the Appropriations Committee or passing bills in the Legislative Council. The majority leader in each house shall direct that a memo be prepared on the date of the asterisked final passage deadline that lists all of the bills to which this exclusion applies. A copy of the memo shall be attached to each bill listed in the memo and a copy shall be sent to each of the bill's sponsors. At the discretion of the respective majority leaders, the list may include any bills that have been referred out of the Appropriations Committee during the seven legislative days preceding the asterisked final passage deadline. In addition, bills in the Appropriations Committee in either house on the day of a separate final passage deadline as specified by the Committee on Delayed Bills for that house are also excluded from the specified final passage deadline unless otherwise indicated in the delayed bill form.*

A.3.2 Joint Resolution Expressing the Will of Both Houses

Note: Under House Rule 26 (a)(2) and Senate Rule 30 (b), the subject matter of joint resolutions is limited; many matters are addressed in tributes, which are not prepared by OLLS. See House Rule 26A and Senate Rule 30A for matters that should be addressed in a tribute.

HOUSE JOINT RESOLUTION 24-1004

CONCERNING THE COMMEMORATION OF THE BIRTHDAY OF THE REVEREND DR. MARTIN LUTHER KING, JR.

WHEREAS, The Reverend Dr. Martin Luther King, Jr., was born in Atlanta, Georgia, on January 15, 1929, graduated from Morehouse College with a Bachelor of Arts degree in 1948, graduated from Crozer Theological Seminary in 1951, and received a Ph.D. from Boston University in 1955; and

WHEREAS, Rev. Dr. King's faith, resiliency, and commitment to justice became known worldwide through his speeches, writings, and actions; and

WHEREAS, Rev. Dr. King declared that the moral responsibility to aid the oppressed did not stop at the edge of his street, town, or state when he wrote, "I cannot sit idly by in Atlanta and not be concerned about what happens in Birmingham. Injustice anywhere is a threat to justice everywhere"; and

WHEREAS, Rev. Dr. King, like thousands of other African Americans, withstood attacks on his home and family, among numerous other threats and setbacks, but stood firm in his conviction that "although the arc of the moral universe is long ... it bends toward justice"; and

WHEREAS, Rev. Dr. King embodied civil disobedience. In confronting hatred and violence, Rev. Dr. King, along with others in the civil rights movement, created constructive tension by being intentionally nonviolent but direct, urgent but strategic, in their actions. This tension compelled examination of Jim Crow laws and our country's structures and systems that favored White Americans in access to safety, education, jobs, homes, and voting -- without which true civil rights could never be achieved. The urgency required confronting the myths that time will inevitably cure all ills and that progress toward equal rights is inevitable; and

WHEREAS, In a letter from the Birmingham jail, Rev. Dr. King wrote that "it is easy for those who have never felt the stinging darts of segregation to say 'wait'," but asking African Americans to wait for courts or for minds to change on their own was a continued miscarriage of justice. He wrote, "We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed"; and

WHEREAS, Rev. Dr. King led the Montgomery bus boycott, a 13-month protest beginning in 1955, against the segregated city bus lines; and

WHEREAS, The Montgomery bus boycott led to the integration of the Montgomery city bus system and is widely credited as the beginning of the civil rights movement in America; and

WHEREAS, In 1957, Rev. Dr. King was elected president of the Southern Christian Leadership Conference, an organization formed to provide leadership for the burgeoning civil rights movement; and

WHEREAS, Between 1957 and 1968, Rev. Dr. King spoke more than 2,500 times, wrote five books as well as numerous articles, led protests, helped register African American voters, was arrested more than 20 times, was awarded five honorary degrees, was named Man of the Year by Time magazine, and became the symbolic leader of the African American community as well as a world figure; and

WHEREAS, On August 28, 1963, Rev. Dr. King directed the March on Washington, at which more than 200,000 Americans gathered in the name of equality and civil rights and which culminated in Rev. Dr. King's historic "I Have a Dream" speech; and

WHEREAS, The leadership of Rev. Dr. King was instrumental in bringing about landmark legislation, such as the Civil Rights Act of 1964, which prohibited segregation in public accommodations and facilities and banned discrimination based on race, color, or national origin, and the Voting Rights Act of 1965, which eliminated for disenfranchised African American voters the remaining legal barriers to voting; and

WHEREAS, In 1964, Rev. Dr. King was awarded the Nobel Peace Prize for his tireless and selfless work in the pursuit of justice for African Americans and other oppressed people in America; and

WHEREAS, Rev. Dr. King's 13 years of nonviolent leadership ended abruptly and tragically when, on April 4, 1968, he was assassinated while standing on the balcony of the Lorraine Motel in Memphis, Tennessee; and

WHEREAS, Rev. Dr. King's life and work continue to echo in our lives as we strive to reach the lofty goal he set when he said, "Let us all hope that the dark clouds of racial prejudice will soon pass away and the deep fog of misunderstanding will be lifted from our fear-drenched communities, and in some not too distant tomorrow the radiant stars of love and brotherhood will shine over our great nation with all their scintillating beauty"; and

WHEREAS, The celebration of Martin Luther King, Jr. Day in Colorado was championed for 10 years by Representatives Wellington and Wilma Webb in the hope that the acknowledgment of the holiday would demonstrate Colorado's commitment to confronting and ending racial injustices. In 1974, Representative Wellington Webb first introduced a resolution to acknowledge the holiday and, in 1975, introduced a bill to do the same. Although these efforts were initially unsuccessful, the work nevertheless continued. In 1985, Representative Wilma Webb championed the cause as the primary bill sponsor. On April 4 of that same year, Colorado Governor Dick Lamm signed the bill into law; and

WHEREAS, Colorado's enactment of the holiday and the annual Marade -- a merging of the words "march" and "parade" -- predated the federal holiday designation, and the first celebration in Colorado was on January 20, 1986; and

WHEREAS, Rev. Dr. King's birthday is a federal holiday in the United States and a state holiday in the state of Colorado, and is celebrated each year on the third Monday in January; and

WHEREAS, On Monday, January 15, 2024, we celebrate the thirty-eighth anniversary of Rev. Dr. King's holiday; now, therefore,

Be It Resolved by the House of Representatives of the Seventy-fourth General Assembly of the State of Colorado, the Senate concurring herein:

That we, the members of the Colorado General Assembly, hereby encourage appropriate observances, ceremonies, and activities to commemorate the federal and state legal holiday honoring the Rev. Dr. Martin Luther King, Jr., throughout all cities, towns, counties, school districts, and local governments within Colorado.

Be It Further Resolved, That the legislature commends the continued teaching of Rev. Dr. King's legacy and nonviolent principles that have been recently added to Colorado's seventh-grade social studies standards. The legislature also calls upon Colorado public schools to continue to honor the legacy of Rev. Dr. King by actively teaching Rev. Dr. King's cause for leadership and nonviolent principles as a response to the forces of hatred, racism, and violence in our society. In this way, Colorado and Colorado educators can lead the way in showing a new generation a path to a better, more prosperous, and more peaceful future for all.

Be It Further Resolved, That copies of this Joint Resolution be sent to President Joe Biden, Honorable Governor Jared Polis, the Honorable Wilma and Wellington Webb, the Congressional Black Caucus, the National Black Caucus of State Legislators, and the members of Colorado's congressional delegation: Senators Michael Bennet and John Hickenlooper and Representatives Diana DeGette, Joe Neguse, Lauren Boebert, Ken Buck, Doug Lamborn, Jason Crow, Brittany Pettersen, and Yadira Caraveo.

A.3.3 Joint Memorial on the Death of a Former Member of the General Assembly

SENATE JOINT MEMORIAL 24-003

MEMORIALIZING FORMER SENATOR KEITH KING.

WHEREAS, Former Colorado Representative, Senator, businessman, and education leader Keith King was born in Tekoa, Washington on March 12, 1948; and

WHEREAS, Senator King began his lifelong dedication to education by earning a bachelor's degree in industrial education at Colorado State University - Pueblo in 1970 and a master's degree in vocational education at Oregon State University in 1976; and

WHEREAS, Senator King married his wife, Sandi, in 1972, and together they had two sons, Jeremy and Brandon, and eventually five wonderful grandchildren; and

WHEREAS, Senator King began his career teaching high school in California and Oregon in the 1970s; during this time, he and his 1976-77 Industrial Mechanics students took on an impressive class project: Building a house on a job site; and

WHEREAS, In 1977, Senator King returned to Colorado and started a new phase in his life as owner of Waterbed Palace, a business that thrived under his leadership, eventually expanding to 18 stores in six states; and

WHEREAS, In 1991, Senator King was elected to the Cheyenne Mountain school board, and after the end of his term, in 1995, he helped found Cheyenne Mountain Charter Academy, serving as its president from 1995 until 1998; and

WHEREAS, Senator King began his legislative career in the Colorado House of Representatives in 1998. He served four terms and was elected Assistant Majority Leader in 2001 and Majority Leader in 2003. As a testament to his leadership, he was named Legislator of the Year in 2002 by the Colorado Springs Chamber of Commerce and in 2003 by the Economic Development Council of Colorado; and

WHEREAS, Carrying his passion for education to the statehouse, then-Representative King soon began to build on his predecessors' work on the charter school system. In his very first session as a legislator, he sponsored two important bills to improve charter school operations. In sessions that followed, he also focused on the funding systems for education, sponsoring the College Opportunity Fund bill and the annual school finance bill; and

WHEREAS, After two years away from the General Assembly, he ran for the Colorado State Senate and was elected to represent District 12 in 2008. Senator King would go on to serve four years in that role; and

WHEREAS, Senator King was known for his attention to detail as a legislator and earned the title of "Amendment King" during his time at the State Capitol. "No one read bills more thoroughly than King", said former Senator Evie Hudak, "with plenty of amendments to follow";

and

WHEREAS, In 2012, upon King's retirement from the Senate, then-Senator Mike Johnson said, "[Senator King] has done as much for education policy in ... the last 14 years as anyone in the state, both on the ground, running a school, and working in education policy"; and

WHEREAS, Current legislators continue to admire Senator King and his legacy, such as Representative Don Wilson, who called Senator King "a humble and hard-working man that so many of us looked up to. Keith had an amazingly positive impact on Colorado that will not soon be forgotten"; and

WHEREAS, When this dedicated policymaker left the statehouse, he continued his public service on the Colorado Springs City Council and on numerous boards and planning councils for charter schools throughout the state; and

WHEREAS, Keith's goal was to honor his Lord and Savior, Jesus Christ, by his favorite scripture, Psalms 71:14-18: "As for me, I will always have hope; I will praise you more and more. My mouth will tell of your righteous deeds, of your saving acts all day long--though I know not how to relate them all. I will come and proclaim your mighty acts, Sovereign Lord; I will proclaim your righteous deeds, yours alone. Since my youth, God, you have taught me, and to this day I declare your marvelous deeds. Even when I am old and gray, do not forsake me, my God, till I declare your power to the next generation, your mighty acts to all who are to come"; now, therefore,

Be It Resolved by the Senate of the Seventy-fourth General Assembly of the State of Colorado, the House of Representatives concurring herein:

That we, the Colorado General Assembly, honor Senator Keith King for his many years of service to our state and the impact his work will have for generations to come.

Be It Further Resolved, That copies of this Joint Memorial be sent to Sandi King, Jeremy King, and Brandon King.

A.3.4 Joint Resolution Containing Interrogatories to the Colorado Supreme Court

Note: Interrogatories can be sent by one house only and handled through a simple resolution. For an example, see SR02S-002, accessible in 2002B CLICS database.

HOUSE JOINT RESOLUTION 20-1006

CONCERNING A REQUEST TO THE SUPREME COURT OF THE STATE OF COLORADO TO RENDER ITS OPINION UPON A QUESTION REGARDING SECTION 7 OF ARTICLE V OF THE STATE CONSTITUTION.

WHEREAS, A new outbreak of coronavirus disease, now identified specifically as COVID-19, was detected in China in December 2019; and

WHEREAS, Since then, the disease has spread to every continent except Antarctica and to 125 countries and territories, and as of March 13, 2020, worldwide there were over 145,000 reported cases of, and 5,416 deaths resulting from, COVID-19, and these numbers are increasing hourly; and

WHEREAS, On March 10, 2020, Governor Polis declared a state of epidemic disaster emergency in Colorado, and on March 11, 2020, the World Health Organization declared a global pandemic due to the spread of COVID-19; and

WHEREAS, Joint Rule 44 of the Joint Rules of the Senate and House of Representatives, adopted in 2009, establishes procedures that the General Assembly follows during a declared disaster emergency caused by a public health emergency infecting or exposing a great number of people to disease, agents, toxins, or other such threats; and

WHEREAS, According to the Centers for Disease Control and Prevention, one of the ways in which COVID-19 most quickly spreads is through personal contact, including contact that occurs when large numbers of people congregate in enclosed spaces, which is a daily occurrence at the State Capitol during the legislative session when, on any given day, literally thousands of people may congregate within the State Capitol to participate in the legislative process; and

WHEREAS, The General Assembly values and considers significant citizen input throughout the legislative session, and limiting public access to the State Capitol to limit the spread of COVID-19 while continuing to hold public hearings on legislation is not a viable option that respects and upholds the foundational value of civic participation in public policy-making and government; and

WHEREAS, Legislators and other individuals participating in the legislative process return to their homes throughout the state or even in other states each evening or each weekend, and if any of them have been infected with COVID-19 through interactions at the State Capitol, they will spread the virus to additional areas of the state or to other states in which cases of the virus have not yet been identified; and

WHEREAS, The General Assembly has considered the possibility of continuing to operate virtually, using technology to conduct committee hearings and floor sessions remotely, but this option is currently not feasible due to cost, the existence of numerous logistical hurdles, and the time required to procure, install, and test the technological infrastructure that would be necessary to ensure secure participation by legislators and access for the public. Further, continuing the legislative session by allowing only remote public testimony using the technological infrastructure currently available at the State Capitol would still require individuals to congregate in centralized locations; and

WHEREAS, The General Assembly is considering adjourning the 2020 regular legislative session for a specific period of time by passing a joint resolution to adjourn for more than three days to help mitigate the spread of COVID-19; and

WHEREAS, The second regular session of the Seventy-second General Assembly convened on January 8, 2020, and is currently scheduled to adjourn sine die on May 6, 2020, pursuant to section 7 of article V of the state constitution and Joint Rule 23 (d) of the Joint Rules of the Senate and House of Representatives, which deems the constitutional maximum for the legislative session of 120 calendar days to be 120 consecutive calendar days; and

WHEREAS, Joint Rule 44 (g) states, "Notwithstanding the provisions of Joint Rule 23 (d) of the Joint Rules of the Senate and the House of Representatives regarding counting legislative days of a regular session as consecutive days, the maximum of one hundred twenty calendar days prescribed by section 7 of article V of the state constitution shall be counted as one hundred twenty separate working calendar days if the Governor has declared a state of disaster emergency due to a public health emergency pursuant to section 24-33.5-704, Colorado Revised Statutes."; and

WHEREAS, If the General Assembly adjourns for more than three days, pursuant to Joint Rule 44 (g) the General Assembly will count the first day upon which the General Assembly reconvenes following the adjournment as the next legislative day following the day upon which the General Assembly adjourned. For example, if the General Assembly adjourns on March 16, 2020, the sixty-ninth legislative day, the day upon which the General Assembly reconvenes will be counted as the seventieth legislative day; and

WHEREAS, Upon reconvening following an extended adjournment, the General Assembly may continue taking action on pending legislation until the General Assembly reaches the 120th legislative day, which, because of the period of adjournment, will occur after May 6, 2020; and

WHEREAS, As of March 13, 2020, there were 355 bills pending in the Senate and the House of Representatives, and upon reconvening following an extended adjournment it is likely that there will still be many important pieces of legislation pending that are of significant interest to the public and will require a substantial amount of time for consideration, public stakeholder participation and input, and debate before these bills can be acted upon; and

WHEREAS, If the General Assembly were to adjourn sine die on May 6, 2020, it could return in an extraordinary legislative session to address any legislation not enacted by that date. However, the General Assembly may convene in an extraordinary legislative session only if called by the governor, who could limit the issues under consideration during the session, or by the written request, specifying the purpose of the session, of two-thirds of the members of each

house. Thus, the General Assembly could be foreclosed from considering one or more of the bills pending upon adjournment if the subjects of those bills were not included within the scope of the governor's call or agreed to by two-thirds of the legislators; and

WHEREAS, Courts have held that legislation passed by a legislature outside of the constitutionally established length of a regular legislative session is void because the legislature does not have constitutional authority to enact legislation outside of the term of a regular legislative session unless convened in a special legislative session; and

WHEREAS, The constitutionality of the currently pending bills may be challenged if they are enacted after May 6, 2020, and could be struck down if the provisions of Joint Rule 44 (g) that allow the limited number of calendar days to be counted as working, rather than consecutive, calendar days are found to be unconstitutional; and

WHEREAS, If the General Assembly is required to adjourn for a significant period of time to protect the public health and, when they reconvene, the remaining time to act on legislation before May 6, 2020, is significantly reduced, legislators will be unable to serve their constituents by debating and acting on many of the bills introduced during the 2020 regular legislative session, and the citizens who elected those legislators to act on those bills will be deprived of representation by their chosen representatives, who may be ineligible to return for the following regular legislative session due to term limits or the outcome of the November 2020 election; and

WHEREAS, Section 3 of article VI of the state constitution directs the Colorado Supreme Court to "give its opinion upon important questions upon solemn occasions when requested by the ... senate, or the house of representatives;..."; and

WHEREAS, The rare, almost unprecedented, public health situation currently facing the state warrants resolution by the Colorado Supreme Court of whether the 120 calendar days of the regular legislative session must be counted consecutively because the General Assembly, in seeking to protect the public health by adjourning the legislative session to a specified date to mitigate the spread of COVID-19, should not be forced to either significantly reduce the length of the legislative session and thereby fail to meet its responsibility to serve the citizens of the state by passing legislation in the public interest or jeopardize the constitutionality of that legislation, including legislation required to fund state government, by proceeding to take action on legislation after May 6, 2020; and

WHEREAS, Resolving the issue of whether section 7 of article V of the state constitution limits the regular legislative session to 120 consecutive calendar days relates directly to all of the legislation that will be pending as of May 6, 2020, and the right of the public to full legislative debate and consideration of that legislation; and

WHEREAS, Due to the rapid spread of COVID-19 and the immediate need for the General Assembly to decide on a course of action concerning the regular legislative session in order to protect the public health, time is of the essence in determining the meaning of the constitutional restriction on the length of the legislative session; and

WHEREAS, Quickly resolving the question of the meaning of the constitutional restriction on the length of the legislative session in the context of an interrogatory proceeding is necessary to enable the General Assembly to take responsible action concerning the continuance of the

regular legislative session without calling into question the constitutionality of any legislation that may be enacted after the completion of 120 consecutive calendar days; now, therefore,

Be It Resolved by the House of Representatives of the Seventy-second General Assembly of the State of Colorado, the Senate concurring herein:

That, in view of the premises, the question of the constitutionally required length of the regular legislative session, in the judgment of the Senate and the House of Representatives, is a matter of extreme importance and public interest and is being raised on the solemn and historic occasion of the occurrence of a global pandemic and the need to protect the health and safety of the citizens of Colorado. Further, resolution of the question is connected to the ultimate constitutionality of pending legislation that may be enacted outside of the period of 120 consecutive calendar days. The Senate and the House of Representatives require resolution of this question as soon as possible in order to act in a manner that protects the public health and safety, preserves the public's rights of civic engagement, preserves the validity and constitutionality of enacted legislation, and ensures the General Assembly's ability to enact legislation to promote the public interest and provide for the continued operation of state government. The Senate and the House of Representatives accordingly respectfully request the Supreme Court of the State of Colorado to render its opinion upon the following question:

Does the provision of section 7 of article V of the state constitution that limits the length of the regular legislative session to "one hundred twenty calendar days" require that those days be counted consecutively and continuously beginning with the first day on which the regular legislative session convenes or may the General Assembly for purposes of operating during a declared disaster emergency interpret the limitation as applying only to calendar days on which the Senate or the House of Representatives, or both, convene in regular legislative session?

Be It Further Resolved, That, in view of the extremely time-sensitive nature of this request, the Senate and the House of Representatives respectfully request that, if the Supreme Court grants this request for interrogatories and requires briefing and oral argument, the Supreme Court adopt an expedited schedule to require submission of briefs within no more than five days after the order granting the request and submission of answer briefs and scheduling for oral arguments within no more than five days following submission of briefs.

Be It Further Resolved, That the President and the Speaker of the House of Representatives, immediately upon passage of this Joint Resolution, shall transmit to the Clerk of the Colorado Supreme Court a certified copy of this Joint Resolution and certified copies of Joint Rules 23 and 44 of the Joint Rules of the Senate and House of Representatives, and that the Committee on Legal Services shall be directed to furnish said Court with an adequate number of copies of this Joint Resolution and said Joint Rules and shall submit to said Court such further documents and briefs as the Court may require to expedite its procedure in the premises.

A.4 Examples of Less-Common Measures

A.4.1 Joint Resolution Asking Congress to Submit an Amendment to the U.S. Constitution

HOUSE JOINT RESOLUTION 11-1017

CONCERNING A REQUEST THAT CONGRESS CALL A CONVENTION FOR THE LIMITED PURPOSE OF CONSIDERING AN AMENDMENT TO THE UNITED STATES CONSTITUTION TO REQUIRE A BALANCED FEDERAL BUDGET AND RESTRAIN FEDERAL SPENDING.

WHEREAS, As of March 2010, federal government spending had increased over the previous 5-year period from nearly 20% of the American economy, its historical average since the end of World War II, to 24.7% of the American economy; and

WHEREAS, During that same period, federal expenditures rose from $2.47 trillion to $3.52 trillion, an increase of 42%, and the budget proposed by the Obama administration in February 2011 calls for $3.73 trillion in federal spending; and

WHEREAS, Such high levels of spending have resulted in growing federal budget deficits and a rapid expansion of the federal debt; and

WHEREAS, The national debt of the United States currently stands at over $14 trillion and continues to grow, and estimates of the United States' total unfunded liability for all obligations, including Social Security and Medicare, range from approximately $50 trillion to over $100 trillion; and

WHEREAS, In February 2011, the Obama administration projected that the federal budget deficit for the current fiscal year will reach a record high of $1.65 trillion; and

WHEREAS, The Congressional Budget Office has described the long-term budget outlook as "daunting", and the Obama administration has estimated that its current budget proposal will result in annual deficits of over $600 billion and will add over $7 trillion to the national debt over the next decade; and

WHEREAS, As a share of gross domestic product (GDP), the national debt increased from 36% of GDP at the end of 2007 to 62% of GDP at the end of 2010, and the Congressional Budget Office has estimated that it will reach 69% of GDP by the end of 2011 and 77% of GDP by 2021; and

WHEREAS, Federal spending has put the United States' credit rating at risk, as Moody's Investors Service and Standard and Poor's have cautioned that United States Treasury bonds could lose their triple-A credit rating if the federal government fails to effectively manage its debt; and

WHEREAS, Our debt is increasingly owed to the governments of foreign nations, not to the citizens of the United States; therefore, our wealth is transferred to others and may compromise the ability of the United States to exercise independent judgment in foreign policy issues; and

WHEREAS, The federal government's persistent deficit spending has created an ever-increasing burden for the American people and for future generations of Americans; and

WHEREAS, Continued deficit spending demonstrates the unwillingness or inability of the federal government to limit spending to available resources; and

WHEREAS, Like many other state legislatures, the Colorado General Assembly has successfully maintained a balanced budget and saved the people of this state from crippling deficits and massive debt burdens; and

WHEREAS, The Colorado General Assembly understands that, while there are inherent risks in calling for a convention to amend the Constitution of the United States, the scope of the federal deficit and the extent of the debt accumulated by the federal government make the risk of inaction even greater; and

WHEREAS, Article V of the Constitution of the United States provides that amendments to the Constitution may be proposed to the states for ratification by a convention called by Congress on the application of the legislatures of two-thirds of the several states, which proposed amendments shall be valid to all intents and purposes when ratified by the legislatures of three-fourths of the states or by conventions in three-fourths of the states, as either mode of ratification may be proposed by Congress; now, therefore,

Be It Resolved by the House of Representatives of the Sixty-eighth General Assembly of the State of Colorado, the Senate concurring herein:

(1) That we, the members of the Colorado General Assembly, with all due respect and great reluctance, do hereby make application to the Congress of the United States to call a convention pursuant to article V of the Constitution of the United States for the limited purpose of considering an amendment to the Constitution of the United States containing the following provisions:

(a) The total amount of money expended by the United States in any fiscal year shall not exceed the total amount of revenue received by the United States during such fiscal year, except revenue received from the issuance of bonds, notes, or other obligations of the United States;

(b) The total amount of money expended by the United States in any fiscal year shall not exceed the amount equal to 20% of the gross domestic product of the United States during the last calendar year ending before the beginning of such fiscal year;

(c) The requirements specified in paragraphs (a) and (b) of this subsection (1) shall not apply during any fiscal year during any part of which the United States is at war as declared by Congress under section 8 of article I of the Constitution; and

(d) The requirements specified in paragraphs (a) and (b) of this subsection (1) may be suspended by a concurrent resolution approved by a two-thirds vote of the members of each

house of Congress. Any such suspension shall be effective only during the fiscal year during which the suspension is approved.

(2) That, in the event that a convention called by Congress pursuant to the application set forth in subsection (1) of this Joint Resolution exceeds the limited purpose of considering an amendment containing the provisions specified in said subsection (1), such application shall be rescinded and shall be of no effect.

Be It Further Resolved, That this Joint Resolution be sent to President Barack Obama, Speaker of the United States House of Representatives John Boehner, Democratic Leader of the United States House of Representatives Nancy Pelosi, Majority Leader of the United States Senate Harry Reid, Republican Leader of the United States Senate Mitch McConnell, and the members of Colorado's congressional delegation.

A.4.2 Joint Resolution Asking Congress to Call a Federal Constitutional Convention

Note: if this measure was starting in the Senate, it would be a Joint Memorial.

HOUSE JOINT RESOLUTION 24-1024

CONCERNING AN APPLICATION TO THE UNITED STATES CONGRESS FOR AN ARTICLE V CONVENTION OF THE STATES FOR PROPOSING AMENDMENTS TO THE UNITED STATES CONSTITUTION THAT IMPOSE FISCAL RESTRAINTS ON THE FEDERAL GOVERNMENT, LIMIT THE POWER AND JURISDICTION OF THE FEDERAL GOVERNMENT, AND LIMIT THE TERMS OF OFFICE FOR ITS OFFICIALS AND FOR MEMBERS OF CONGRESS.

WHEREAS, The founders of our Constitution empowered state legislators to be guardians of liberty against future abuses of power by the federal government; and

WHEREAS, The federal government has created a crushing national debt through improper and imprudent spending; and

WHEREAS, The federal government has invaded the legitimate roles of the states through the manipulative process of federal mandates, most of which are unfunded to a great extent; and

WHEREAS, The federal government has ceased to live under a proper interpretation of the Constitution of the United States; and

WHEREAS, It is the solemn duty of the states to protect the liberty of our people, particularly for generations to come, by proposing amendments to the Constitution of the United States through a convention of the states under article V for the purpose of restraining these and related abuses of power; now, therefore,

Be It Resolved by the House of Representatives of the Seventy-fourth General Assembly of the State of Colorado, the Senate concurring herein:

(1) That the Colorado General Assembly hereby applies to the United States Congress, under the provisions of article V of the Constitution of the United States, for the calling of a convention of the states limited to proposing amendments to the Constitution of the United States that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and for members of Congress; and

(2) That this application constitutes a continuing application in accordance with article V of the Constitution of the United States until the legislatures of at least two-thirds of the several states have made applications on the same subject.

Be It Further Resolved, That copies of this Joint Resolution be sent to the President and

Secretary of the United States Senate, the Speaker and Clerk of the United States House of Representatives, each member of Colorado's congressional delegation, and the officers of each of the legislative houses in the several states, requesting their cooperation.

A.4.3 Concurrent Resolution to Call a State Constitutional Convention

SENATE CONCURRENT RESOLUTION 06-004

SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF COLORADO THE PROPOSAL FOR THE HOLDING OF A CONSTITUTIONAL CONVENTION TO REVISE, ALTER, AND AMEND THE CONSTITUTION OF THE STATE OF COLORADO, WITH ANY REFERRED MEASURE FROM THE CONVENTION REQUIRING THE VOTE OF TWO-THIRDS OF THE DELEGATES THERETO.

Bill Summary

Submits, at the next general election, the proposal of holding a convention to revise, alter, and amend the state constitution, with any referred measure from the convention requiring the vote of 2/3 of the delegates thereto.

Be It Resolved by the Senate of the Sixty-fifth General Assembly of the State of Colorado, the House of Representatives concurring herein:

SECTION 1. At the next election at which such question may be submitted, there shall be submitted to the registered electors of the state of Colorado, for their approval or rejection, the proposal of holding a convention to revise, alter, and amend the present constitution of the state of Colorado, with any referred measure from the convention requiring the vote of two-thirds of the delegates thereto.

SECTION 2. The submission of said proposal shall be duly published and certified, and shall be placed on the official ballots at the next general election, in the same manner as amendments to the state constitution.

SECTION 3. Each elector voting at said election and desirous of voting for or against said proposal shall cast a vote as provided by law either "Yes" or "No" on the proposal: "FOR THE HOLDING OF A CONSTITUTIONAL CONVENTION TO REVISE, ALTER, AND AMEND THE CONSTITUTION OF THE STATE OF COLORADO, WITH ANY REFERRED MEASURE FROM THE CONVENTION REQUIRING THE VOTE OF TWO-THIRDS OF THE DELEGATES THERETO."

SECTION 4. The votes cast for the adoption or rejection of said proposal shall be canvassed and the result determined in the manner provided by law for the canvassing of votes

for representatives in Congress, and if a majority of the electors voting on the proposal shall have voted "Yes", the general assembly, at its next session, shall provide for the calling of a constitutional convention, as provided in section 1 of article XIX of the state constitution.

A.4.4 Concurrent Resolution to Ratify an Amendment to the U.S. Constitution

HOUSE CONCURRENT RESOLUTION 72-1017

CONCERNING RATIFICATION OF THE PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RELATIVE TO EQUAL RIGHTS FOR MEN AND WOMEN.

Resolution Summary

The concurrent resolution ratifies the proposed equal rights amendment to the U.S. constitution.

WHEREAS, the Ninety-second Congress of the United States of America, at its second session, in both Houses, by a constitutional majority of two-thirds thereof, has proposed an amendment to the Constitution of the United States of America in the following words, to wit:

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three fourths of the several states within seven years from the date of its submission by Congress:

"ARTICLE

"Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.

"Section 2. The congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

"Section 3. This amendment shall take effect two years after the date of ratification."

Be It Resolved by the House of Representatives of the Forty-eighth General Assembly of the State of Colorado, the Senate concurring herein:

That the said proposed amendment to the Constitution of the United States of America be and the same is hereby ratified by the General Assembly of the State of Colorado.

Be It Further Resolved, That a copy of the foregoing preamble and resolution be transmitted to the Administrator of General Services of the United States, which copy shall be certified by the President of the Senate, attested by the Secretary of the Senate, and certified by the Speaker of the House of Representatives, attested by the Chief Clerk of the House of Representatives, of the Forty-eighth General Assembly of the State of Colorado.

A.4.5 Bill Amending a Territorial Charter

See SB14-199

Appendix B: Amending Clauses

B.1 General Rules

Section 2.5.4 of this manual contains some general rules and instructions about drafting amending clauses. This appendix B contains more detailed instructions and comprehensive examples to assist drafters in crafting amending clauses.

B.1.1 Order of Clause Instructions

When combining multiple provisions, such as a subsection or smaller subdivision of a section, in a single amending clause, follow the order of instructions listed in the below table.

Note: Straight repeals and the repeal of provisions being relocated or not being relocated can't be combined with other instructions.

1. **Amend:** Includes the following types of amending instructions: Amend; amend as it/they exist[s] until [date]; amend as it/they will become effective [date]; amend with relocated provisions; amend as added/amended by [bill #].
2. **Repeal:** Includes the following types of user-friendly repeal instructions: Repeal; repeal and reenact, with amendments; repeal as it/they exist[s] until [date]; repeal as it/they will become effective [date]; repeal as amended/added by [bill #].
3. **Add:** Includes the following types of instructions that add provisions: Add; add with relocated provisions; add with amended and relocated provisions.
4. **RC & RE**

B.1.2 Format of Amending Clause

In Colorado Revised Statutes, 37-87-102, **amend** (1)(b), (1)(c), (3), and (4); and **add** (5) as follows:

1. Begin with the document you are amending: "In Colorado Revised Statutes," "In the constitution of the state of Colorado," "In the Session Laws of Colorado," "In the Rules of the Senate," "In the Rules of the House of Representatives," or "In the Joint Rules of the Senate and the House of Representatives,".

2. Specify the section number or the instruction next:

    a. If you're amending a provision smaller than a section, list the section number first.

In Colorado Revised Statutes, 37-87-102, **amend** (1)(b), (1)(c), (3), and (4); and **add** (5) as follows:

b. If amending a section or larger, list the instruction first.

In Colorado Revised Statutes, **amend** 37-87-102 as follows:

3. Indicate in bold how you are changing the provision.

4. Group all changes relating to a single instruction together.

In Colorado Revised Statutes, 37-87-102, **amend** (1)(b), (1)(c), (3), and (4); **repeal** (1)(e) and (3.7); and **add** (5) and (6) as follows:

5. Separate each group of "instructions" with a semicolon and show them in the appropriate order (see section B.1.1 "Order of Clause Instructions" above).

6. Type subdivisions of a section so that they are together without spaces between them.

(1)(b), (1)(c)(I), (1)(d)(I)(A)

7. End the clause with "as follows", unless it will be a straight repeal.

Note: The amending clause macro will address items 1 through 3, 5, and 7 above, in most situations.

B.1.3 Guidelines for Combining Instructions in a Single Amending Clause[1]

Amending Clause Instruction	Can you combine this **instruction with other instructions** within one amending clause?	Can you combine **different instructions within one amending clause** for multiple subdivisions of a C.R.S. section?	Can you combine **multiple C.R.S. sections** within one amending clause?*	Can you combine **multiple C.R.S. parts** within one amending clause?*	Can you combine **multiple C.R.S. articles** within one amending clause?*
Amend	Yes	Yes	No	No	No
Amend as it/they exists until	Yes, except the instruction "Amend/ Repeal as it/they will become effective"	Yes, except the instruction "Amend/ Repeal as it/they will become effective"	No	No	No
Amend as it/they will become effective	Yes, except the instruction "Amend/ Repeal as it/they exists until"	Yes, except the instruction "Amend/ Repeal as it/they exists until"	No	No	No
Amend with relocated provisions	Yes	Yes	No	Yes, but parts must be in same article	Yes, but articles must be in same title
Amend as added/amended by [bill #]	Yes	Yes	No	No	No

[1] Do not combine in one amending clause provisions that are not on the same level—for example, do not amend a part with an article in one clause.

Amending Clause Instruction	Can you combine this **instruction with other instructions** within one amending clause?	Can you combine **different instructions within one amending clause** for multiple subdivisions of a C.R.S. section?	Can you combine **multiple C.R.S. sections** within one amending clause?*	Can you combine **multiple C.R.S. parts** within one amending clause?*	Can you combine **multiple C.R.S. articles** within one amending clause?*
Repeal (user-friendly)	Yes	Yes	No	No	No
Repeal (straight)	No	No	Yes, can combine different subdivisions, sections, parts, articles, or titles	Yes, can combine different subdivisions, sections, parts, articles, or titles	Yes, can combine different subdivisions, sections, parts, articles, or titles
Repeal of provisions being or not being relocated	No	No	Yes, can combine different subdivisions, sections, parts, articles, or titles	Yes, can combine different subdivisions, sections, parts, articles, or titles	Yes, can combine different subdivisions, sections, parts, articles, or titles
Repeal and reenact, with amendments	Yes	Yes	No	Yes, but parts must be in same article	Yes, but articles must be in same title
Repeal as it/they exist[s] until	Yes, except the instruction "Amend/ Repeal as it/they will become effective"	Yes, except the instruction "Amend/ Repeal as it/they will become effective"	No	No	No

Amending Clause Instruction	Can you combine this **instruction with other instructions** within one amending clause?	Can you combine **different instructions within one amending clause** for multiple subdivisions of a C.R.S. section?	Can you combine **multiple C.R.S. sections** within one amending clause?*	Can you combine **multiple C.R.S. parts** within one amending clause?*	Can you combine **multiple C.R.S. articles** within one amending clause?*
Repeal as it/they will become effective	Yes, except the instruction "Amend/ Repeal as it/they exist[s] until"	Yes, except the instruction "Amend/ Repeal as it/they exist[s] until"	No	No	No
Repeal as amended/added by [bill #]	Yes	Yes	No	No	No
Add	Yes	Yes	Yes, but sections must be in same part (or same article if there are no parts)	Yes, but parts must be in same article	Yes, but articles must be in same title
Add with relocated provisions	Yes	Yes	Yes, but sections must be in same part (or same article if there are no parts)	Yes, but parts must be in same article	Yes, but articles must be in same title
Add with amended and relocated provisions	Yes	Yes	Yes, but sections must be in same part (or same article if there are no	Yes, but parts must be in same article	Yes, but articles must be in same title

Amending Clause Instruction	Can you combine this **instruction with other instructions** within one amending clause?	Can you combine **different instructions within one amending clause** for multiple subdivisions of a C.R.S. section?	Can you combine **multiple C.R.S. sections** within one amending clause?*	Can you combine **multiple C.R.S. parts** within one amending clause?*	Can you combine **multiple C.R.S. articles** within one amending clause?*
			parts)		
Recreate and reenact	Yes	Yes	Yes, but sections must be in same part (or same article if there are no parts)	Yes, but parts must be in same article	Yes, but articles must be in same title

B.2 Amending Existing Law

B.2.1 To Amend an entire Section

SECTION 1. In Colorado Revised Statutes, **amend** 18-1-408 as follows:

B.2.2 To Amend an Introductory Portion

If the introductory portion is not numbered, such as in a definitions section:

SECTION 2. In Colorado Revised Statutes, 6-1-1103, **amend** the introductory portion as follows:

If the introductory portion is numbered:

SECTION 3. In Colorado Revised Statutes, 29-4-710.5, **amend** (1) introductory portion as follows:

B.2.3 To Amend an Introductory Portion and a Section Division

SECTION 4. In Colorado Revised Statutes, 6-1-1103, **amend** the introductory portion and (2)(d) as follows:

SECTION 5. In Colorado Revised Statutes, 1-9-203, **amend** (2) introductory portion and (5)(b) as follows:

B.2.4 To Amend an Introductory Portion and Two or More Section Divisions

SECTION 6. In Colorado Revised Statutes, 18-5-403, **amend** (1)(a), (2) introductory portion, (2)(b), (2)(c), (2)(d), and (2)(e) as follows:

B.2.5 To Amend Two or More Introductory Portions and Two or More Section Divisions

SECTION 7. In Colorado Revised Statutes, 16-16-103, **amend** (1) introductory portion, (2) introductory portion, (2)(a)(I), (2)(a)(II), (2)(a)(III), (3)(a), (3)(b) introductory portion, (3)(b)(I), and (4) as follows:

B.2.6 To Amend Several Section Divisions

SECTION 8. In Colorado Revised Statutes, 18-1-410, **amend** (1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), and (2) as follows:

SECTION 9. In Colorado Revised Statutes, 42-4-1101, **amend** (1), (2)(a), (2)(f), (6), (7), (8)(a), (8)(c), (8)(f), and (9)(b) as follows:

B.3 Amending an Entire Provision – Multiple Changes with One Amending Clause

When amending an entire provision, do not break the amending clause down into separate instructions for each action. Instead, use the simple amending clause that amends the entire provision. The “amend” instruction allows you to make any kind of change to the provision.

To amend a section with two versions, go to Appendix B.14 of this manual for the appropriate amending clauses and special notes.

SECTION 10. In Colorado Revised Statutes, **amend** 18-1-201 as follows:

18-1-201. State jurisdiction. (1) A person is subject to prosecution in this state for an offense ~~which~~ THAT he OR SHE commits, by his OR HER own conduct or that of another for which he OR SHE is legally accountable, if:

(a) The conduct constitutes an offense and is committed either wholly or partly within the state; ~~or~~

(b) ~~The conduct outside the state constitutes an attempt, as defined by this code, to commit an offense within the state; or~~

(c) The conduct outside the state constitutes a conspiracy to commit an offense within the state, and an act in furtherance of the conspiracy occurs in the state; or

(d) THE CONDUCT WITHIN THE STATE CONSTITUTES AN ATTEMPT, SOLICITATION, OR CONSPIRACY TO COMMIT IN ANOTHER JURISDICTION AN OFFENSE PROHIBITED UNDER THE LAWS OF THIS STATE AND SUCH OTHER JURISDICTION.

(2) Whether an offender is in or outside of the state is immaterial to the commission of an offense based on an omission to perform a duty imposed by ~~the law of this state~~ THIS ARTICLE 1.

The effect of the amending clause is that the introductory portion to subsection (1) and subsections (1)(a) and (2) are amended, (1)(b) is repealed, and (1)(d) is added.

When the amending clause indicates that the entire provision is amended and you strike through a subdivision of the provision, it will be shown as deleted by amendment rather than repealed when the law is published.

B.4 Repealing Existing Law

B.4.1 General Repeal Clauses

B.4.1.1 User-friendly Repeals

For a user-friendly repeal, the text of the provision is shown in strike type.

B.4.1.1.1 To Repeal a Section

SECTION 11. In Colorado Revised Statutes, **repeal** 25-7-120 as follows:

25-7-120. Judicial review. ~~(1) Any final order or determination by the division or the commission shall be subject to judicial review in accordance with the provisions of this article and the provisions of article 4 of title 24, C.R.S.~~

~~(2) Any party may move the court to remand the case to the division or the commission in the interests of justice for the purpose of adducing additional specified and material evidence and findings thereon; but such party shall show reasonable grounds for the failure to adduce such evidence previously before the division or the commission.~~

~~(3) Any proceeding for judicial review of any final order or determination of the division or the commission shall be filed in the district court for the district in which is located the air pollution source affected.~~

Note:

1. This form of repeal clause is used when the drafter wants the entire provision to appear in the bill in stricken type.
2. User-friendly repeals are treated the same as other amending clauses and require a separate repeal clause for each C.R.S. section number.
3. The statute subdivision designations—(1), (2), (3)—are shown in strike type only when the entire section is repealed. This assures the removal of each statute subdivision designation during the publication process.

B.4.1.1.2 To Repeal Two or More Section Divisions

SECTION 12. In Colorado Revised Statutes, 12-20-103, **repeal** (1)(d), (1)(f), and (1.5) as follows:

12-20-103. Debt management - licensing of companies and individuals. (1) No individual, limited liability company, partnership, unincorporated association, or corporation shall engage in the business of debt management in this state, as defined in section 12-20-102, without a license therefor as provided for in this article 20; except that the following persons are not required to be licensed when engaged in the regular course of their respective businesses and professions:

(d) ~~Employees of licensees under this article;~~

(f) ~~Nonprofit religious, fraternal, or cooperative organizations offering gratuitous debt management service.~~

(1.5) ~~Any individual, limited liability company, partnership, unincorporated association, or corporation claiming an exemption from licensure pursuant to subsection (1) of this section shall have the burden of proving such exemption.~~

Note:

1. The introductory portion to subsection (1) is included for user-friendly purposes and cannot be changed under this type of clause.
2. In this example, the statute subdivision designations—(d), (f), and (1.5)—are not shown in strike type because other portions of the section still exist, and a historical record of those statute subdivisions being repealed is necessary in order to "track" what happened to those portions no longer a part of the C.R.S. section.
3. If you need to make a change to the introductory portion or another part of the section, use an amending clause that amends all provisions or use an amending clause with multiple instructions and include the introductory portion in the amending clause. See section B.2.3 of this appendix for examples.

B.4.1.2 Straight Repeals

For a straight repeal, the text of the provision is not shown. Straight repeals cannot be combined with any other type of instruction because the repealed statutory language isn't shown in a bill but multiple types of straight repeals can be combined in one repeal clause. A straight repeal clause does not end with “as follows:”

B.4.1.2.1 To Repeal a C.R.S. Section

SECTION 13. In Colorado Revised Statutes, **repeal** 13-1-101.

B.4.1.2.2 To Repeal a Part

SECTION 14. In Colorado Revised Statutes, **repeal** part 4 of article 6 of title 13.

B.4.1.2.3 To Repeal Two or More Articles

SECTION 15. In Colorado Revised Statutes, **repeal** articles 10 and 12 of title 18.

B.4.1.2.4 To Repeal Several Sections, Parts, or Articles

SECTION 16. In Colorado Revised Statutes, **repeal** 37-41-139, 37-46-112 (2)(b), 37-46-116, and 37-46-126.5.

SECTION 17. In Colorado Revised Statutes, **repeal** 18-1-101, 18-18-111, 22-1-102, 32-1-104, and 39-1-109.

SECTION 18. In Colorado Revised Statutes, **repeal** 16-11-102.5, part 3 of article 22.5 of title 17, part 10 of article 2 of title 19, 19-2-1203, 19-2-1204, and 19-2-1301 (4).

SECTION 19. In Colorado Revised Statutes, **repeal** part 3 of article 22.5 of title 17, article 3 of title 20, and part 4 of article 20 of title 24.

Note: When multiple sections, parts, and articles are to be repealed, all provisions should be listed numerically.

B.4.2 Future Repeals

There are two different ways to provide for the repeal of a provision in the future, but alternative 2 is the preferred method because keeping track of the future repeal is simplified by having it within the section.

Alternative 1:

Use a straight repeal clause and include a future effective date for the repeal clause in the effective date section.

SECTION 20. In Colorado Revised Statutes, **repeal** 18-5-210, part 3 of article 5 of title 18, 18-6-102, and 22-5-115.

SECTION 21. Effective date. This act takes effect July 1, 2024; except that section 20 of this act takes effect January 1, 2025.

New repeal language will be added by revision by the publications team to the provisions listed in section 20. It will appear in the statute the same way as if alternative 2 is used.

Alternative 2 (Preferred):

Provide for the future repeal in each section, part, or article by adding a repeal date in the statutes. This method makes it simple to extend, shorten, or terminate the effective date of the repeal provision.

SECTION 22. In Colorado Revised Statutes, **amend** 18-5-210 as follows:

18-5-210. Receiving deposits in a failing financial institution - repeal. (1) A person commits a class 6 felony if, as an officer, manager, or other person participating in the direction of a financial institution, he knowingly receives or permits the receipt of a deposit or investment, knowing that the institution is

insolvent. A financial institution is insolvent within the meaning of this section when from any cause it is unable to pay its obligations in the ordinary or usual course of business or its liabilities exceed its assets.

(2) THIS SECTION IS REPEALED, EFFECTIVE JANUARY 1, 2025.

Note: In this example, the entire section must be amended in order to add a new subsection because the original section did not have any subsections. The (1) is added by this amendment.

SECTION 23. In Colorado Revised Statutes, **add** 18-5-308 as follows:

18-5-308. Repeal of part. THIS PART 3 IS REPEALED, EFFECTIVE JANUARY 1, 2025.

SECTION 24. In Colorado Revised Statutes, 18-6-102, **add** (3) as follows:

18-6-102. Criminal abortion - repeal. (1) Any person who intentionally ends or causes to be ended the pregnancy of a woman by any means other than justified medical termination or birth commits criminal abortion.

(2) Criminal abortion is a class 4 felony, but if the woman dies as a result of the criminal abortion, it is a class 2 felony.

(3) THIS SECTION IS REPEALED, EFFECTIVE JANUARY 1, 2025.

In this example, subsections (1) and (2) are included for user-friendly drafting purposes. If you choose not to show the entire provision, the amending clause should say **add** and only the new provision is shown (Subsection (3) in the example above.)

SECTION 25. In Colorado Revised Statutes, 22-5-115, **add** (5) as follows:

22-5-115. Financing boards of cooperative services - repeal. (5) THIS SECTION IS REPEALED, EFFECTIVE JANUARY 1, 2025.

B.5 Adding New Provisions

When a section doesn't have a subsection (1), it is necessary to amend the whole section in order to "add" a subsection (2), therefore, use an "amend" instruction, rather than "add".

B.5.1 To Add a Section Division

SECTION 26. In Colorado Revised Statutes, 13-1-118, **add** (1)(d) as follows:

B.5.2 To Add Two or More Section Divisions

SECTION 27. In Colorado Revised Statutes, 13-1-113, **add** (5) and (6) as follows:

SECTION 28. In Colorado Revised Statutes, 13-1-113, **add** (5)(d) and (6)(c) as follows:

B.5.3 To Add a Section to a Part or Article

A new section can be added to a part when the article is subdivided into parts or to an article when there are no parts. A new section is added by stating the new section number - it is not necessary to indicate whether it is being added to a part or article.

SECTION 29. In Colorado Revised Statutes, **add** 34-49-116 as follows:

SECTION 30. In Colorado Revised Statutes, **add** 34-49-318 as follows:

B.5.4 To Add a Part or Article

SECTION 31. In Colorado Revised Statutes, **add** part 3 to article 53 of title 38 as follows:

Note: When adding a new part to an existing article, all existing references to "this article", this article __", "article __ of this title __", or "article __ of title __" should be checked to ascertain whether they should be changed to refer to a specific part or should be left "article", which would then include the newly added part. This is accomplished by performing computer checks of the statute database.

SECTION 32. In Colorado Revised Statutes, **add** article 4 to title 13 as follows:

B.5.5 To Add Two or More Sections

When adding two or more sections, the sections must be in the same part or article (if there are no parts)

SECTION 33. In Colorado Revised Statutes, **add** 18-1-118, 18-1-119, 18-1-120, 18-1-121, 18-1-122, 18-1-123, 18-1-124, and 18-1-125 as follows:

When adding two or more sections, one amending clause can add more than one provision, but the provisions must be on the same level, e.g., add two new sections, but not a new section and a new part.

B.5.6 To Add Two or More Parts or Articles

When adding two or more parts or articles, the parts must be in the same article and articles must be in the same title.

> **SECTION 34.** In Colorado Revised Statutes, **add** parts 4 and 5 to article 53 of title 38 as follows:

> **SECTION 35.** In Colorado Revised Statutes, **add** articles 3 and 4 to title 13 as follows:

When adding two or more articles or parts, one amending clause can add more than one provision, but the provisions must be on the same level, e.g., add two new parts *or* two new articles, *but not* a new part and a new article.

B.6 Repealing and Reenacting

B.6.1 To Repeal and Reenact Two or More Section Divisions

> **SECTION 36.** In Colorado Revised Statutes, 36-1-137, **repeal and reenact, with amendments,** (1) and (2) as follows:

B.6.2 To Repeal and Reenact a Section

> **SECTION 37.** In Colorado Revised Statutes, **repeal and reenact, with amendments,** 1-1-101 as follows:

Note: If an entire section is repealed and reenacted, section divisions can be moved or changed within the section, but the section itself cannot be moved to a different location.

B.6.3 To Repeal and Reenact a Part

> **SECTION 38.** In Colorado Revised Statutes, **repeal and reenact, with amendments,** part 2 of article 16 of title 10 as follows:

Note: If an entire part is repealed and reenacted, the sections may be moved around and relocated within the part. When an entire part is repealed and reenacted, the source notes and editor's notes for the part will be deleted and a historical editor's note will be added after the part heading for research purposes.

B.6.4 To Repeal and Reenact an Article

SECTION 39. In Colorado Revised Statutes, **repeal and reenact, with amendments,** article 2 of title 31 as follows:

Note: If an entire article is repealed and reenacted, the sections may be moved around and relocated within the article. When an entire article is repealed and reenacted, the source notes and editor's notes for the article will be deleted and a historical editor's note will be added after the article heading for research purposes.

B.6.5 To Repeal and Reenact Two or More Parts or Articles

An R&RE may include two or more parts or articles, but the parts must be in the same article, the articles must be in the same title, and the provisions must be on the same level, e.g. repeal and reenact two parts or two articles, but not a part and an article.

SECTION 40. In Colorado Revised Statutes, **repeal and reenact, with amendments,** parts 2 and 3 of article 16 of title 10 as follows:

SECTION 41. In Colorado Revised Statutes, **repeal and reenact, with amendments,** articles 17 and 18 of title 10 as follows:

B.7 Recreating and Reenacting

When recreating and reenacting, the recreated and reenacted provision must be the same subject as the repealed provision. Provisions cannot be recreated and reenacted in order to reuse the number for a new subject.

B.7.1 To Recreate and Reenact a Section with Amendments

SECTION 42. In Colorado Revised Statutes, **recreate and reenact, with amendments,** 12-47.1-502 as follows:

B.7.2 To Recreate and Reenact a Subsection with Amendments

SECTION 43. In Colorado Revised Statutes, 12-47.1-502, **recreate and reenact, with amendments,** (3) as follows:

B.7.3 To Recreate and Reenact an Article or Part with Amendments

SECTION 44. In Colorado Revised Statutes, **recreate and reenact, with amendments,** article 14 of title 1 as follows:

SECTION 45. In Colorado Revised Statutes, **recreate and reenact, with amendments,** part 12 of article 4 of title 1 as follows:

B.7.4 To Recreate and Reenact Two or More Sections, Parts, or Articles

When recreating and reenacting two or more sections, parts, or articles, the sections must be in the same part (or same article if there are no parts), parts must be in the same article, and articles must be in the same title.

SECTION 46. In Colorado Revised Statutes, **recreate and reenact, with amendments,** parts 4 and 5 of article 1.3 of title 18 as follows:

When recreating and reenacting two or more sections, parts, or articles, one amending clause can recreate and reenact more than one provision, but the provisions must be on the same level, e.g. recreate and reenact two parts *or* two articles, *but not* a part and an article.

B.8 Relocating Provisions

B.8.1 Recodifying Existing Law

When adding with relocated provisions, if the relocated provisions are also amended, the instruction should include "amended". (*See* example B.8.1.2.2). If the provisions are being relocated without amendment, do not include "amended". (See example B.8.1.2.1). Provisions that are amended with relocated provisions do not need an additional "amended" in the instructions. (See example B.8.1.1.1 and example B.8.1.1.2).

When a provision is relocated, in addition to the amending clause that relocates it, the bill should also contain a repeal clause to repeal that provision. (See example B.8.2.1 through example B.8.2.4).

See Appendix A.1.6 of this manual for an example of bills that contain relocated provisions.

B.8.1.1 Amend With Relocated Provisions

These clauses are used when the title, article, part, or section is being reorganized, e.g., subsections are moved around within a section or sections are moved around within a part or article, but everything remains in the original larger provision.

B.8.1.1.1 To Reorganize and Amend an Entire Title, Article, Part, or Section

> **SECTION 47.** In Colorado Revised Statutes, **amend with relocated provisions** title 42 as follows:

In this example, sections, parts, and articles within title 42 can be moved around into different sections, parts, and articles, but they still remain in title 42.

B.8.1.1.2 To Reorganize and Amend Articles or Parts Within a Single Title or Article

When recodifying two or more parts or articles, the parts must be in the same article and the articles must be in the same title.

> **SECTION 48.** In Colorado Revised Statutes, **amend with relocated provisions** articles 22, 23, 24, and 25 of title 40 as follows:

In this example, sections and parts in articles 22, 23, 24, and 25 can be moved around into different sections and parts and can be moved from one article to another, but they always remain in one of those four articles.

B.8.1.2 Add With Relocated Provisions (either with or without amendments)

Used when the title, article, part, or section is being reorganized and moved to an entirely new location, e.g., subsections are moved to different sections, sections are moved to new parts or articles, and parts are moved to new articles.

When relocating two or more sections, parts, or articles, one amending clause can relocate more than one provision, but the provisions must be on the same level, e.g. relocate two parts *or* two articles, *but not* a part and an article.

B.8.1.2.1 To Relocate Multiple Sections from One Title, Article, Part, or Section to Another Title, Article, Part, or Section

When recodifying two or more sections, parts, or articles, the new sections must be in the same part (or same article if there are no parts), new parts must be in the same article, and new articles must be in the same title.

> **SECTION 49.** In Colorado Revised Statutes, **add with relocated provisions** 33-6-133, 33-6-134, and 33-6-135 as follows:
>
> **33-6-133. [Formerly 33-1-111] Hearings - administrative law judges.** Every hearing provided for ....
>
> **33-6-134. [Formerly 33-2-105 (4)] Endangered or threatened species.** Except as otherwise provided in this article 6, it is ....

33-6-135. [Formerly 33-5-106] Vested water rights. This article 6 shall not operate....

In this example, sections 33-6-133, 33-6-134, and 33-6-135 are being added without change to article 6 of title 33. They were originally located in articles 1, 2, and 5 of title 33 and will no longer be found there.

B.8.1.2.2 Relocate Provisions from One Title, Article, Part, or Section to Another Title, Article, Part, or Section

SECTION 50. In Colorado Revised Statutes, **add with amended and relocated provisions** part 3 to article 5 of title 43 as follows:

43-5-301. [Formerly 43-5-206 (1)(c)] Obstructing highway - penalty. No person or corporation shall erect any fence, house, or other structure, or dig pits or holes in or upon any highway, or place thereon or cause or allow to be placed thereon any stones, timber, or trees or any obstruction whatsoever. No person or corporation shall tear down, burn, or otherwise damage any bridge of any highway, or cause wastewater or the water from any ditch, road, drain, flume, agricultural crop sprinkler system, or other source to flow or fall upon any road or highway so as to damage the same or to cause a hazard to vehicular traffic. Any person or corporation so offending ~~is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than three hundred dollars~~ COMMITS A CLASS 4 MISDEMEANOR AND SHALL BE PUNISHED AS SPECIFIED IN SECTION 18-1.3-501, and shall also be liable to any person, unit of government, or corporation in a civil action for any damages resulting therefrom. ...

In this example, part 3 is being added with changes to article 5 of title 43. The provisions being added were originally located in part 2 of article 5 of title 43 and will no longer be found there. The relocation may not include everything that was in part 2.

B.8.2 Repeals Used When Recodifying

If the drafter is not relocating all provisions within the section or sections within the part, article, or title or the drafter is moving the section, part, article, or title to a different section, part, article, or title, the following repeal clause is necessary.

B.8.2.1 When a Section, Part, Article, or Title Is Being Relocated to a Different Part, Article, or Title But One or More Sections in the Part, Article, or Title Are Not Being Relocated

SECTION 51. Repeal of relocated and nonrelocated provisions in this act. In Colorado Revised Statutes, **repeal** part 1 of article 57 of title 35; except that 35-57-103 and 35-57-119 are not relocated.

Note: This clause is for informational purposes and any section listed will not be accounted for in the statutes because the numerical sequence of the prior section, part, article, or title is changed, making it impossible to account for sections not relocated.

B.8.2.2 When One or More Sections in a Part, Article, or Title Are Relocated

SECTION 52. Repeal of relocated provisions in this act. In Colorado Revised Statutes, **repeal** 35-57-105, 35-57-108, and 35-57-120.

Note: This type of repeal will *need* to be accounted for in the statutes where the section, part, article, or title was originally contained.

B.8.2.3 When Two or More Parts, Articles, or Titles Are Relocated But One or More Sections in the Part, Article, or Title Are Not Being Relocated and the Parts Are in the Same Article or the Articles Are in the Same Title

SECTION 53. Repeal of relocated and nonrelocated provisions in this act. In Colorado Revised Statutes, **repeal** parts 2 and 3 of article 17 of title 24; except that 24-17-207 and 24-17-308 are not relocated.

Note: This clause is for informational purposes and any section listed will not be accounted for in the statutes because the numerical sequence of the prior section, part, article, or title is changed, making it impossible to account for sections not relocated.

B.8.2.4 When Two or More Parts, Articles, or Titles Are Relocated But One or More Sections in the Part, Article, or Title Are Not Being Relocated and the Parts Are Not in the Same Article or the Articles Are Not in the Same Title

SECTION 54. Repeal of relocated and nonrelocated provisions in this act. In Colorado Revised Statutes, **repeal** part 3 of article 3 of title 24 and part 2 of article 17 of title 24; except that 24-3-308 and 24-17-207 are not relocated.

Note: This clause is for informational purposes and any section listed will not be accounted for in the statutes because the numerical sequence of the prior section, part, article, or title is changed, making it impossible to account for sections not relocated.

B.9 Adding New Definitions in Definition Sections – Alphabetic Provisions

When it is necessary to add a new definition to an existing definition section and the new definition should come first alphabetically, there are three options:

B.9.1 Option 1 - To Strike and Relocate the Prior Subsection (1)

This method should only be used in a definitions section when it is necessary to insert a new provision in alphabetical order and not in other types of sections.

SECTION 55. In Colorado Revised Statutes, 32-1-802, **amend** (1); and **add** (1.5) as follows:

32-1-802. Definitions. (1) ~~"Board" means the board of directors of a special district~~ "ADULT" MEANS A PERSON EIGHTEEN YEARS OF AGE OR OLDER.

(1.5) "BOARD" MEANS THE BOARD OF DIRECTORS OF A SPECIAL DISTRICT.

B.9.2 Option 2 - To Repeal and Reenact the Entire Section

SECTION 56. In Colorado Revised Statutes, **repeal and reenact, with amendments,** 18-5-201 as follows:

18-5-201. Definitions. AS USED IN SECTIONS 18-5-202 TO 18-5-204, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADULT" MEANS A PERSON EIGHTEEN YEARS OF AGE OR OLDER.

(2) "CREDIT CARD" MEANS A WRITING OR OTHER EVIDENCE OF AN UNDERTAKING TO PAY FOR PROPERTY OR SERVICES DELIVERED OR RENDERED TO OR UPON THE ORDER OF A DESIGNATED PERSON OR THE BEARER.

(3) "CREDIT DEVICE" INCLUDES ANY CREDIT NUMBER, TELEPHONE NUMBER, OR OTHER NUMBER OR DESIGNATION AND ANY LETTER, CERTIFICATE, FORM, PLATE, OR OTHER TANGIBLE THING DESIGNED FOR USE, OR COMMONLY USED, AS A MEANS OF OBTAINING CREDIT OR OF OBTAINING GOODS OR SERVICES ON CREDIT.

B.9.3 Option 3 - To Amend the Entire Section and Renumber

To renumber using this method, the entire larger provision must be in the bill. For example, to renumber subsections, the entire section must be in the bill, to reletter paragraphs within a subsection, the entire subsection must be in the bill.

SECTION 57. In Colorado Revised Statutes, **amend** 32-1-601 as follows:

32-1-601. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "ADULT" MEANS A PERSON EIGHTEEN YEARS OF AGE OR OLDER.

~~(1)~~ (2) "Concurring resolution" means a resolution passed in accordance with this part 6 by the board of any special district for the purpose of accepting the consolidation resolution.

~~(2)~~ (3) "Consolidation resolution" means a resolution passed in accordance with this part 6 by a board of any special district for the purpose of initiating the consolidation of two or more such special districts into a single and consolidated district, the consolidation of one or more of the services of two or more special districts, one of which is not a metropolitan district, or the consolidation of one or more of the services of two or more metropolitan districts.

B.10 Amending Existing Law and Adding New Provisions

B.10.1 To Amend a Section Division and Add a Section Division

SECTION 58. In Colorado Revised Statutes, 31-31-402, **amend** (4); and **add** (2.5) as follows:

B.10.2 To Amend Two or More Section Divisions and Add One Section Division

SECTION 59. In Colorado Revised Statutes, 28-3.1-209, **amend** (1) and (3)(b); and **add** (3)(c) as follows:

SECTION 60. In Colorado Revised Statutes, 18-1-105, **amend** (6) and (7); and **add** (9) as follows:

SECTION 61. In Colorado Revised Statutes, 37-87-102, **amend** (2)(b), (2)(c), (3)(e), and (5); and **add** (2)(h) as follows:

B.10.3 To Amend One or More Section Divisions and Add Two or More Section Divisions

SECTION 62. In Colorado Revised Statutes, 28-3.1-409, **amend** (2); and **add** (5) and (6) as follows:

SECTION 63. In Colorado Revised Statutes, 37-87-102, **amend** (2); and **add** (4)(h) and (6) as follows:

SECTION 64. In Colorado Revised Statutes, 37-87-102, **amend** (2)(a) and (2)(b)(II); and **add** (3)(a)(IV), (4)(h), (6), and (7) as follows:

B.10.4 To Amend an Introductory Portion and One Section Division and Add a Section Division

SECTION 65. In Colorado Revised Statutes, 11-2-119, **amend** (1) introductory portion and (2); and **add** (6) as follows:

SECTION 66. In Colorado Revised Statutes, 17-1-102, **amend** introductory portion and (1.7); and **add** (7.7) as follows:

B.10.5 To Amend an Introductory Portion and Two or More Section Divisions and Add Two or More Section Divisions

SECTION 67. In Colorado Revised Statutes, 42-4-1204, **amend** (1), (2) introductory portion, (4)(a), and (4)(c); and **add** (2)(c) and (2)(d) as follows:

B.11 Repealing Provisions and Amending and/or Adding Provisions

B.11.1 To Amend Section Divisions While Repealing Others

SECTION 68. In Colorado Revised Statutes, 12-35-114.5, **amend** (1) and (2) introductory portion; and **repeal** (2)(d) and (2)(h) as follows:

12-35-114.5. Licensure by credentials. (1) The board shall provide for licensure upon application of any person licensed in good standing to practice dentistry in another state ~~or territory of the United States~~ who provides the credentials and meets the qualifications set forth in this section in the manner prescribed by the board.

(2) The board shall issue a license to an applicant licensed as a dentist in another state ~~or territory of the United States~~ if said applicant has submitted credentials and qualifications for licensure that include:

(d) ~~Proof the applicant has not been subject to final or pending disciplinary action by any state in which the applicant is or has been previously licensed; however, if the applicant has been subject to disciplinary action, the board may review such disciplinary action to determine if it warrants grounds for refusal to issue a license;~~

(h) ~~Proof the applicant has met any more stringent criteria established by the board.~~

B.11.2 To Amend an Introductory Portion and One Section Division and Repeal a Section Division

SECTION 69. In Colorado Revised Statutes, 11-2-119, **amend** (1) introductory portion and (2); and **repeal** (6) as follows:

B.11.3 To Repeal Section Divisions While Adding a Section Division

SECTION 70. In Colorado Revised Statutes, 37-87-102, **repeal** (2)(b), (2)(c), (3)(e), and (5); and **add** (2)(h) as follows:

B.11.4 To Repeal a Section Division, Add Section Divisions, and Amend a Section Division

SECTION 71. In Colorado Revised Statutes, 28-3.1-409, **amend** (2); **repeal** (3)(c); and **add** (5) and (6) as follows:

B.12 Repealing and Reenacting Provisions

B.12.1 To Repeal and Reenact Two or More Section Divisions and Amend a Section Division

SECTION 72. In Colorado Revised Statutes, 36-1-137, **amend** (3); and **repeal and reenact, with amendments,** (1) and (2) as follows:

B.12.2 To Repeal and Reenact Two or More Section Divisions, Amend a Section Division, and Add a Section Division

SECTION 73. In Colorado Revised Statutes, 36-1-137, **amend** (3); **repeal and reenact, with amendments,** (1) and (2); and **add** (4) as follows:

B.12.3 To Repeal and Reenact a Section Division, Amend a Section Division, Repeal a Section Division, and Add a Section Division

SECTION 74. In Colorado Revised Statutes, 36-1-137, **amend** (3); **repeal** (1); **repeal and reenact, with amendments,** (2); and **add** (4) as follows:

B.13 Recreating and Reenacting Provisions

B.13.1 To Recreate and Reenact a Subsection with Amendments and Amend Another Provision

SECTION 75. In Colorado Revised Statutes, 12-47.1-502, **amend** (1)(d); and **recreate and reenact, with amendments,** (3) as follows:

B.14 Amending Sections with Future Effective Dates (2 Versions)

When a provision is shown in the statutes with two versions, there are editor's notes within each provision indicating when the first version will no longer be effective and when the second version will take effect at some future date. In order to amend either of the provisions, the amending clause must indicate which version of the provision is being amended unless the first version has already expired. For example, if the first version is effective until January 1 of the

upcoming year and will have expired before the bill is introduced, the second version will be effective when the bill is introduced and it is not necessary to specify which version is amended.

B.14.1 To Amend a Provision That Is Currently Effective (1st Version)

SECTION 76. In Colorado Revised Statutes, 1-45-108, **amend as it exists until July 1, 2013,** (3.3) as follows:

1-45-108. Disclosure - definition. (3.3) ***[Editor's note: This version of subsection (3.3) is effective until July 1, 2013.]*** Subject to the provisions of subsection (7) of this section, each issue committee shall register with the appropriate officer within ten calendar days of accepting or making contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question. If required to register under the requirements of this subsection (3.3), the registration of the issue committee shall include a statement containing the items listed in paragraphs (a) to (e) of subsection (3) of this section in connection with other committees and a political party.

B.14.2 To Amend a Provision with a Future Effective Date (2nd Version)

SECTION 77. In Colorado Revised Statutes, 19-2-1602, **amend as it will become effective July 1, 2013,** (3.3) as follows:

1-45-108. Disclosure - definition. (3.3) ***[Editor's note: This version of subsection (3.3) is effective July 1, 2013.]*** Subject to the provisions of subsection (7) of this section, each issue committee shall register with the appropriate officer within ten calendar days of accepting or making contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question or upon receipt of the notice from the secretary of state pursuant to section 1-40-113 (1)(b). If required to register under the requirements of this subsection (3.3), the registration of the issue committee shall include a statement containing the items listed in paragraphs (a) to (e) of subsection (3) of this section in connection with other committees and a political party.

Note:

1. Both versions of the statute will appear in the C.R.S. with an editor's note that explains when the version will cease to be effective and when the version will take effect. **Do not include the editor's note in the bill.**

2. **Examples B.14.1 and B.14.2 cannot be combined into one amending clause** because different versions of the same subsection are being amended and it would confuse the reader to include them in the same section of a bill.

3. The intent of these amending clauses is to provide the reader an explanation for why the same provision appears twice in a bill and are used solely for sections or parts of sections that show two versions of the same provision in the statutes with different effective dates. These amending clauses make "tracking" the sections in an effective date section unnecessary because the amending clause specifies the effective date.

4. A provision that is effective at some point in the future because a bill from a previous session had a future effective date **cannot** take effect at an earlier time, and so that provision must be accounted for either in an effective date clause at the end of the bill specifying the future effective date for that provision or by using the samples above.

B.14.3 To Amend a Provision with a Future Effective Date and a Provision That Doesn't Have a Future Effective Date

SECTION 78. In Colorado Revised Statutes, 19-2-1602, amend (2)(b); and **amend as it will become effective July 1, 2012,** (1)(a) as follows:

B.14.4 To Amend More than One Provision with a Future Effective Date

SECTION 79. In Colorado Revised Statutes, 42-4-237, **amend as they will become effective July 1, 2013,** (3)(f) and (3)(g) as follows:

B.14.5 To Repeal a Provision That Is Currently Effective and Has a Future Repeal Date

SECTION 80. In Colorado Revised Statutes, 1-45-103, **repeal as it exists until January 1, 2013,** (12) as follows:

1-45-103. Definitions. As used in this article 45, unless the context otherwise requires:

(12) ***[Editor's note: This version of subsection (12) is effective until January 1, 2013.*]*** ~~"Issue committee" shall have the same meaning as set forth in section 2 (10) of article XXVIII of the state constitution.~~

*The statute will appear in the C.R.S. with an editor's note that explains when it will expire. Do not include the editor's note in the bill

B.14.6 To Repeal a Provision with a Future Effective Date

SECTION 81. In Colorado Revised Statutes, 1-45-103, **repeal as it will become effective January 1, 2013,** (12) as follows:

1-45-103. Definitions. As used in this article 45, unless the context otherwise requires:

(12) ***[Editor's note: This version of subsection (12) is effective January 1, 2013.*]*** ~~(a) "Issue committee" shall have the same meaning as set forth in section 2 (10) of article XXVIII of the state constitution.~~

~~(b) For purposes of section 2 (10)(a)(I) of article XXVIII of the state constitution, "major purpose" means support of or opposition to a ballot issue or ballot question that is reflected by an organization's specifically identified objectives in its organizational documents at the time it is established or as such documents are later amended.~~

*The statute will appear in the C.R.S. with an editor's note that explains when it will take effect. Do not include the editor's note in the bill

B.15 Amending Bills from Earlier in the Same Session

If it is necessary to amend a provision from another bill, that provision cannot take effect until the effective date of that other bill or the effective date of the current bill, whichever is later. It may be necessary to have an effective date in the bill that states that the provision does not take effect until a certain date or that it is contingent on the other bill passing.

B.15.1 To Amend a Section Division That Has Been Amended in a Bill Previously Passed During the Same Session

SECTION 82. In Colorado Revised Statutes, 24-30-203.5, **amend as amended by House Bill 11-1307** (4) as follows:

B.15.2 To Amend a Section Division That Has Been Newly Enacted in a Bill Previously Passed During the Same Session

SECTION 83. In Colorado Revised Statutes, 24-30-203.5, **amend as added by House Bill 11-1307** (5) as follows:

B.15.3 To Repeal a Section Division That Has Been Amended in a Bill Previously Passed During the Same Session

SECTION 84. In Colorado Revised Statutes, 24-30-203.5, **repeal as amended by House Bill 11-1307** (4) as follows:

B.15.4 To Amend a Section That Has Been Amended in a Bill Previously Passed During the Same Session

SECTION 85. In Colorado Revised Statutes, **amend as amended by Senate Bill 12-089** 12-22-113.5 as follows:

B.15.5 To Amend a Section That Has Been Newly Enacted in a Bill Previously Passed During the Same Session

SECTION 86. In Colorado Revised Statutes, **amend as added by House Bill 12-1009** 18-1-110 as follows:

B.15.6 To Repeal a Section That Has Been Amended in a Bill Previously Passed During the Same Session

SECTION 87. In Colorado Revised Statutes, **repeal as amended by Senate Bill 12-089** 12-22-113.5 as follows:

B.15.7 To Repeal a Section That Has Been Newly Enacted in a Bill Previously Passed During the Same Session

SECTION 88. In Colorado Revised Statutes, **repeal as added by House Bill 12-1009** 18-1-110 as follows:

B.15.8 To Recreate and Reenact an Article, Part, Section, or Portion of a Section That Has Been Repealed in a Previous Bill During the Same Session

SECTION 89. In Colorado Revised Statutes, 26-4-528, **recreate and reenact, with amendments, as repealed by House Bill 12-1167** (1)(b) as follows:

SECTION 90. In Colorado Revised Statutes, **recreate and reenact, with amendments, as repealed by House Bill 12-1167** part 2 of article 2 of title 27 as follows:

B.15.9 To Amend a Section That Has Been Amended in Two or More Bills Previously Passed During the Same Session

SECTION 91. In Colorado Revised Statutes, **amend as amended by Senate Bill 12-021 and House Bill 12-1011** 18-1-101 as follows:

B.15.10 To Repeal a Section or Sections from a Bill Previously Passed During the Same Session

Repealing sections of a bill that was passed in the same legislative session is slightly different — start the clause with the bolded instruction and state only the bill section numbers to be repealed and the bill number (since the bill has not yet appeared in the statutes). This will return the language to current law as if the changes in the first bill never took place.

SECTION 92. Repeal sections 6 and 7 of House Bill 12-1001.

B.15.11 To Add a Section to an Article Created by Another Bill Passed During the Same Session

SECTION 93. In Colorado Revised Statutes, article 3.7 of title 8 **as added by HB 21-1150, add** 8-3.7-105 as follows:

B.16 Combining Instructions That Include Amendments to Bills from Earlier in the Same Session

B.16.1 To Amend a Provision That Has Been Newly Enacted in a Bill Previously Passed During the Same Session and Add a New Provision

SECTION 94. In Colorado Revised Statutes, 22-53-107.4, **amend as added by House Bill 10-1004** (5)(d); and **add** (7) as follows:

Note: Subsection (5)(d), which was "enacted" in the earlier bill, will appear in lower case type with current language stricken and new language in caps. Even though subsection (5)(d) has not yet appeared in the statutes, it has become law.

B.16.2 To Amend Section Divisions That Have Been Newly Enacted in a Bill Previously Passed During the Same Session, Amend Other Section Divisions Not Amended or Enacted in a Bill Previously Passed During the Same Session, and Add a New Provision

SECTION 95. In Colorado Revised Statutes, 22-53-107.4, **amend** (3) and (6); **amend as added by House Bill 10-1004** (5)(d) and (5)(e); and **add** (7) as follows:

B.16.3 To Amend Section Divisions That Have Been Amended in a Bill Previously Passed During the Same Session, Amend Other Section Divisions Not Amended or Enacted in a Bill Previously Passed During the Same Session, and Add a New Provision

SECTION 96. In Colorado Revised Statutes, 22-53-107.4, **amend** (3)(a), (5)(c), and (6)(a); **amend as amended by House Bill 10-1004** (5)(d) and (6)(b); and **add** (7) as follows:

B.17 Concurrent Resolutions

B.17.1 General Rules

See Order of Clause Instructions in section B.1.1 of this appendix.

B.17.1.1 Format of Amending Clause

SECTION 97. In the constitution of the state of Colorado, section 12 of article IV, **amend** (2) as follows:

1. Begin with "In the constitution of the state of Colorado,".
2. The concurrent resolution amending clauses use the same instructions as statutory amending clauses and should be bolded.
3. As with statutory clauses, for provisions smaller than a constitutional section, state the section and article numbers before the instruction.
4. End the clause with "as follows", unless it will be a straight repeal.

B.17.1.2 Guidelines for Combining Instructions in a Single Amending Clause[2]

Amending Clause Instruction	Can you combine this **instruction with other instructions** within one amending clause?	Can you combine **different instructions within one amending clause** for multiple subdivisions of a Constitutional section?	Can you combine **multiple Constitutional sections** within one amending clause?[3]	Can you combine **multiple Constitutional articles** within one amending clause?[4]
Amend	Yes	Yes	No	No

[2] If you are unsure about whether you can combine certain provisions or instructions because they are not reflected in the above table, see the PUB Team.

[3] Do not combine in a single amending clause provisions that are not on the same level—for example, do not amend a section with an article in one clause.

[4] Do not combine in a single amending clause provisions that are not on the same level—for example, do not amend a section with an article in one clause.

Amending Clause Instruction	Can you combine this **instruction with other instructions** within one amending clause?	Can you combine **different instructions within one amending clause** for multiple subdivisions of a Constitutional section?	Can you combine **multiple Constitutional sections** within one amending clause?[3]	Can you combine **multiple Constitutional articles** within one amending clause?[4]
Amend with relocated provisions	Yes	Yes	Yes, but sections must be in same article	Yes
Repeal (user-friendly)	Yes	Yes	No	No
Repeal (straight)	No	No	Yes, can combine different subdivisions, sections, or articles	Yes, can combine different subdivisions, sections, or articles
Repeal and reenact, with amendments	Yes	Yes	Yes, but sections must be in same article	Yes
Add	Yes	Yes	Yes, but sections must be in same article	Yes
Add with relocated provisions	Yes	Yes	Yes, but sections must be in same article	Yes
Add with amended and relocated provisions	Yes	Yes	Yes, but sections must be in same article	Yes
Recreate and reenact	Yes	Yes	Yes, but sections must be in same article	Yes

Reminder: Article XIX, section 2(2) of the Colorado constitution provides that each General Assembly, including the 1st Regular Session and the 2nd Regular Session, can propose amendments to no more than *SIX articles* of the state constitution.

B.17.2 To Amend a Constitutional Section

SECTION 98. In the constitution of the state of Colorado, **amend** section 12 of article IV as follows:

B.17.3 To Repeal Two or More Constitutional Sections - Straight Repeal

SECTION 99. In the constitution of the state of Colorado, **repeal** sections 14, 15, 17, and 21 of article IV.

Note: The only time more than one section is included in the same clause is when the sections are being repealed. A user-friendly repeal may be used as an alternative.

B.17.4 To Repeal a Constitutional Section - User Friendly

SECTION 100. In the constitution of the state of Colorado, **repeal** section 3 of article V as follows:

Section 3. Appointment of state auditor - term - qualifications - duties. ~~(1) The general assembly, by a majority vote of the members elected to and serving in each house, shall appoint, without regard to political affiliation, a state auditor, who shall be a certified public accountant licensed to practice in this state, to serve for a term of five years and until his successor is appointed and qualified. Except as provided by law, he shall be ineligible for appointment to any other public office in this state from which compensation is derived while serving as state auditor. He may be removed for cause at any time by a two-thirds vote of the members elected to and serving in each house.~~

~~(2) It shall be the duty of the state auditor to conduct post audits of all financial transactions and accounts kept by or for all departments, offices, agencies, and institutions of the state government, including educational institutions notwithstanding the provisions of section 14 of article IX of this constitution, and to perform similar or related duties with respect to such political subdivisions of the state as shall from time to time be required of him by law.~~

~~(3) Not more than three members of the staff of the state auditor shall be exempt from the personnel system of this state.~~

B.17.5 To Add a Constitutional Section

SECTION 101. In the constitution of the state of Colorado, **add** section 13 to article IV as follows:

B.17.6 To Amend a Constitutional Section Division and Add a Constitutional Section Division

SECTION 102. In the constitution of the state of Colorado, section 49 of article V, **amend** (1); and **add** (3) as follows:

B.17.7 To Amend Two or More Constitutional Section Divisions

SECTION 103. In the constitution of the state of Colorado, section 9 of article XVIII, **amend** (1), (4)(b), and (5)(b)(I) as follows:

B.17.8 To Amend a Constitutional Section Division and Repeal a Constitutional Section Division

SECTION 104. In the constitution of the state of Colorado, section 9 of article XVIII, **amend** (1); and **repeal** (4)(b) as follows:

B.18 Session Laws

B.18.1 General Rules

See Order of Clause Instructions in section B.1.1 of this appendix.

B.18.1.1 Format of Amending Clause

SECTION 105. In Session Laws of Colorado 2011, **amend** section 5 of chapter 17 as follows:

1. Begin with "In Session Laws of Colorado [year],".
2. The Session Laws use the same instructions as statutory amending clauses and should be bolded.
3. Specify the section and chapter number as usual.
4. End the clause with "as follows", unless it will be a straight repeal.

5. Only one section from the Session Laws can be amended at a time.

B.18.1.2 Guidelines for Combining Instructions in a Single Amending Clause[5]

Amending Clause Instruction	Can you combine this **instruction with other instructions** within one amending clause?	Can you combine **different instructions within one amending clause** for multiple subdivisions of a Session Law section?	Can you combine **multiple Session Law sections** within one amending clause?	Can you combine **multiple Session Law chapters** within one amending clause?
Amend	Yes	Yes	No	No
Repeal (user-friendly)	Yes	Yes	No	No
Repeal (straight)	No	No	Yes, but sections must be in same chapter	No
Add	Yes	Yes	No	No

B.18.2 Amending Bills from Prior Sessions

B.18.2.1 To Amend a C.R.S. Section Number That Does Not Yet Appear in the Statutes but That Does Appear in the Session Laws From a Previous Session

SECTION 106. In Session Laws of Colorado 2012, **amend** 22-44-103.5, Colorado Revised Statutes, as amended by section 1 of chapter 83, as follows:

SECTION 107. In Session Laws of Colorado 2020, First Extraordinary Session, **amend** 24-32-721, Colorado Revised Statutes, as amended by section 1 of chapter 8, as follows:

This situation would occur during a special session.

[5] If you are unsure about whether or not you can combine certain provisions or instructions because they are not reflected in the above table, see the PUB Team.

B.18.3 Amending Prior Bills with Non-C.R.S. Sections

B.18.3.1 To Amend a Section of a Bill Passed in a Prior Session and the Section Did Not Have a C.R.S. Section Number

SECTION 108. In Session Laws of Colorado 1991, **amend** section 3 of chapter 24 as follows:

Section 3. **El Paso county water master plan - appropriation.**

Note:

1. An effective date section would be an example of a section without a C.R.S. section number that may need to be amended.
2. You can only amend one section of the session laws in an amending clause.

B.18.3.2 Supplemental Appropriations

In supplemental appropriations, the bill number is included in the amending clause. It is not included in other types of amending clauses that amend the session laws.

SSECTION 109. Appropriation to the judicial department for the fiscal year beginning July 1, 2010. In Session Laws of Colorado 2010, section 8 of chapter 405, (HB 10-1404), **amend** (2) as follows:

SECTION 110. Appropriation to the department of public safety for the fiscal year beginning July 1, 2010. In Session Laws of Colorado 2010, section 2 of chapter 453, (HB 10-1376), **amend** Part XVII (1)(B) as follows:

SECTION 111. Capital construction appropriations to the department of higher education for the fiscal year beginning July 1, 2005. In Session Laws of Colorado 2005, section 3 of chapter 354, (SB 05-209), **amend** Part IV (7) and the affected totals, as the affected totals are amended by section 5 of chapter 392 and as Part IV (7) and the affected totals are amended by section 18 of chapter 394, Session Laws of Colorado 2006 (HB 06-1385), as the affected totals are amended by section 3 of chapter 464, Session Laws of Colorado 2007 (SB 07-181), and as the affected totals are amended by section 1 of chapter 463, Session Laws of Colorado 2009 (SB 09-280), as follows:

B.18.3.3 To Amend a Subdivision of a Section of a Bill Passed in a Prior Session if the Section Did Not Have a C.R.S. Section Number

SECTION 112. In Session Laws of Colorado 2010, section 9 of chapter 310, **amend** (2) as follows:

Section 9. **Specified effective date - applicability.** (2) (a) Section 7 of this act takes effect January 1, 2011, and applies to injuries sustained on or after January 1, 2012.

(b) SECTION 8 OF THIS ACT APPLIES TO ALL REQUESTS FOR LUMP SUM PAYMENTS, REGARDLESS OF THE DATE OF A CLAIMANT'S INJURY.

SECTION 113. In Session Laws of Colorado 2005, section 2 of chapter 197, **amend** (1)(a)(I) introductory portion, (1)(a)(I)(A), (1)(a)(I)(D), and the affected totals as follows:

This amending clause was rewritten from section 4 of SB11-203. To see the section that was amended, *see* chapter 231 of the 2011 session laws.

B.18.3.4 To Amend a Section of a Bill Passed in a Prior Session if the Section Did Not Have a C.R.S. Section Number and if the Section Has Also Been Previously Amended

SECTION 114. In Session Laws of Colorado 1973, **amend** section 25 of chapter 340, as amended by section 2 of chapter 82, Session Laws of Colorado 1974, as follows:

B.18.3.5 To Amend a Section of a Resolution or Joint Resolution That Was Printed in the Session Laws

SECTION 115. In Session Laws of Colorado 2003, HJR 03-1012, **amend** (2) introductory portion, (2)(i), and the affected totals as follows:

This amending clause was rewritten from section 6 of SB11-203. To see the section that was amended, see the rerevised version of that bill.

B.18.3.6 To Amend a Section of a Resolution or Joint Resolution That Was Printed in the Session Laws if it Has Been Previously Amended

SECTION 116. In Session Laws of Colorado 2001, HJR 01-1022, **amend** (1) introductory portion, (1)(b), and the affected totals, as amended by HJR 02-1038,

Session Laws of Colorado 2002, and as further amended by section 2 (1)(a)(II)(A) of chapter 197, Session Laws of Colorado 2005; **add** (2) as follows:

This amending clause was rewritten from section 5 of SB11-203. To see the section that was amended, see chapter 231 of the 2011 session laws.

B.19 Rules of the Senate and the House of Representatives and the Joint Rules

B.19.1 General Rules

See Order of Clause Instructions in section B.1.1 of this appendix.

B.19.1.1 Format of Amending Clause

That in the Rules of the Senate, Rule No. 25, **amend** (b)(2) as follows:

1. Amending clauses for the joint session rules differ from other clauses since these clauses must follow a standard resolving clause, thus beginning "That in the Rules of the Senate," or "That in the Rules of the House of Representatives,".
2. The amending clauses for the House and Senate Rules use the same instructions as statutory amending clauses and should be bolded.
3. As with statutory clauses, for provisions smaller than an entire rule, state the rule number before the instruction. When amending entire rules, state the rule number after the instruction.
4. End the clause with "as follows", unless it will be a straight repeal.

B.19.1.2 Guidelines for Combining Instructions in a Single Amending Clause[6]

Amending Clause Instruction	Can you combine this **instruction with other instructions** within one amending clause?	Can you combine **different instructions within one amending clause** for multiple subdivisions of a Rule?	Can you combine **multiple Rules** within one amending clause?
Amend	Yes	Yes	No
Repeal (user-friendly)	Yes	Yes	No
Repeal (straight)	No	No	Yes
Add	Yes	Yes	Yes

B.19.2 Rules of Either House

B.19.2.1 To Amend a Rule of Either House

That in the Rules of the Senate, Rule No. 21, **amend** (a)(9) as follows:

Be It Resolved by the House of Representatives of the Seventy-fourth General Assembly of the State of Colorado:

That in the Rules of the House of Representatives, Rule No. 25, **amend** (f.5)(3) as follows:

25. Committees

(f.5) (3) If the chair receives a complaint against a member of the House of Representatives or a partisan staff person of the House of Representatives under the Workplace Harassment Policy, the chair shall convene a meeting of the House Workplace Harassment Committee to consider the complaint and shall proceed in accordance with the Workplace Harassment Policy. Pursuant to the Workplace Harassment Policy and section 24-6-402 (3)(a)(III), Colorado Revised Statutes, meetings of the House Workplace Harassment Committee may occur in executive session. Additionally, pursuant to section 24-72-204 (3)(a)(X.5), Colorado Revised Statutes, all documents related to any complaint

[6] If you are unsure about whether or not you can combine certain provisions or instructions because they are not reflected in the above table, see the PUB Team.

are confidential and are not subject to public inspection, except as otherwise provided in section 24-72-204 (9), Colorado Revised Statutes, or as permitted under the Workplace Harassment Policy.

B.19.2.2 To Add a Rule to the Rules of Either House

That in the Rules of the House of Representatives, **add** Rule No. 45 as follows:

B.19.2.3 To Repeal a Rule of Either House

That in the Rules of the Senate, **repeal** Rule No. 42 as follows:

B.19.3 The Joint Rules

B.19.3.1 To Amend Two or More Joint Rule Divisions

That in the Joint Rules of the Senate and the House of Representatives, Joint Rule No. 25, **amend** (a), (b), and (c) as follows:

That in the Joint Rules of the Senate and the House of Representatives, Joint Rule No. 24, **amend** (b)(1)(A), (b)(1)(D), and (c) as follows:

B.19.3.2 To Amend a Joint Rule

That in the Joint Rules of the Senate and the House of Representatives, **amend** Joint Rule No. 21 as follows:

B.19.3.3 To Amend a Joint Rule Division and Add a Joint Rule Division

That in the Joint Rules of the Senate and the House of Representatives, Joint Rule No. 23, **amend** (a)(1); and **add** (a)(4) as follows:

B.19.3.4 To Repeal a Joint Rule

That in the Joint Rules of the Senate and the House of Representatives, Joint Rule No. 24, **repeal** (b)(1)(B) as follows:

B.19.3.5 To Add Two or More Joint Rules

That in the Joint Rules of the Senate and the House of Representatives, **add** Joint Rule Nos. 25 and 26 as follows:

B.19.4 The Joint Session Rules

B.19.4.1 To Amend a Joint Session Rule

That in the Joint Session Rules of the Senate and the House of Representatives, **amend** Joint Session Rule No. 1 as follows:

B.19.4.2 To Add a Joint Session Rule

That in the Joint Session Rules of the Senate and the House of Representatives, **add** Joint Session Rule No. 36 as follows:

B.19.4.3 To Repeal a Joint Session Rule

That in the Joint Session Rules of the Senate and the House of Representatives, **repeal** Joint Session Rule No. 33 as follows:

B.20 Agency Rules and Regulations

To amend or repeal an agency rule, ***see* the rule review supervisor for instructions** and Appendix H of this manual.

Appendix C: Amendment Samples

C.1 Basic Structure

An amendment consists of a series of instructions that include or are followed by changes to statutory text. The first instruction in an amendment identifies the version of the bill or committee report being amended. Each instruction includes the page and line numbers of the amendment where changes to the text of the bill or committee report are being made.

General information:

- Include the page and line number for every amendment instruction;
- Every amendment instruction ends with a period;
- Use "substitute", "insert", or "add" not "substitute the following:", "insert the following:", or "add the following:";
- Put text on a separate line from the amendment instruction only if needed to show formatting or if a new amendment instruction;
- Don't add commas in the amendment instructions: "after", "before", "insert", or "add".

C.1.1 To Strike Current Law in an Amendment

When current law is stricken or repealed by an amendment, it cannot simply be removed from the bill but must be replaced in strike type so that the bill, as amended, will show how the current law is being changed. Therefore, the instruction to strike current law is followed by an instruction to replace it with the same words in strike type followed by the new language, if any, in small capitals:

> Amend printed bill, page 1, line 8, strike "commission who shall provide for the issuance of" and substitute "~~commission who shall provide for the issuance of~~ SERVICE PROVIDERS WHO SHALL ISSUE".
>
> Page 9, line 7, strike "or counties," and substitute "~~or counties,~~".

Stricken material can be amended to unstrike the language as well to return the language to how it reads in current law:

> Page 9, line 10, strike "~~annually~~ SEMIANNUALLY" and substitute "annually".

If all changes to a provision in a bill are being removed and the provision is being returned to current law, the bill section should be amended out instead of removing each change.

C.1.2 To Show Formatting in an Amendment

Put text on a separate line from the amendment instruction and separate the instruction from the amendment with a blank line only when adding a new amendment instruction or when it is necessary to indicate formatting, such as a "Left Tab".

Formatting needs to be shown:

> Page 2, after line 10 insert:
>
> > "(4) THIS IS AN ENTIRE SUBSECTION INSERTED AFTER A LINE.".

Formatting does not need to be shown:

> Page 6, strike line 22 and substitute "MAY CONSIST OF NO MORE THAN TWENTY-FIVE EARLY CHILDHOOD COUNCILS, INCLUDING EXISTING PILOT SITE AGENCIES WHOSE CONTRACTS ARE RENEWED AT THE TIME OF REVIEW,".
>
> Page 15, line 7, after "(1)(b)," insert "(2)(b)(I)(C),".
>
> Page 21, line 23, before "COUNTIES" insert "CITIES OR".

C.1.3 To Add or Remove Bill Sections, C.R.S. Sections, Subsections, Paragraphs, Subparagraphs, or Sub-subparagraphs

When a bill section, new C.R.S. section, new subsection, new paragraph, new subparagraph, or new sub-subparagraph is added or removed from a bill, all subsequent new provisions of the same type must be renumbered. At times, it may be best to renumber line by line, but in most circumstances, a "renumber" or "reletter" instruction can be used. The renumber instruction doesn't require a page or line number. This instruction must be repeated each time a provision is stricken or added unless the provisions are next to each other. The renumber instructions should be written as follows:

- To renumber a bill section: Renumber succeeding section(s) accordingly.
- To renumber a statutory section: Renumber succeeding C.R.S. section(s) accordingly.
- To renumber a subsection: Renumber succeeding subsection(s) accordingly.
- To renumber a paragraph: Renumber succeeding paragraph(s) accordingly.
- To renumber a subparagraph: Renumber succeeding subparagraph(s) accordingly.
- To renumber a sub-subparagraph: Renumber succeeding sub-subparagraph(s) accordingly.

Renumbering paragraphs, subparagraphs, and sub-subparagraphs is one of the rare occasions when we refer to these provisions by their individual names, rather than as subsections.

Striking a bill section (**SECTION 1.**, **SECTION 2.**, etc):

Page 19, strike lines 4 through 13.

Renumber succeeding sections accordingly.

Striking multiple bill sections on multiple pages:

Strike pages 29 through 36.

Page 37, strike lines 1 through 3.

Renumber succeeding sections accordingly.

Adding a bill section:

Page 38, before line 1 insert:

"**SECTION 25. Effective date.** This act takes effect July 1, 2010.".

Renumber succeeding section accordingly.

If a new part or article or multiple new sections are being added in the bill, an amendment may strike a C.R.S. section, which will remove it from the bill and keep current law:

Page 21, strike lines 6 through 15.

Renumber succeeding C.R.S. sections accordingly.

If multiple C.R.S. sections are added in one amending clause and one of the C.R.S. sections is being stricken from the bill, be sure to amend the amending clause in addition to striking the C.R.S. section from the bill. In the following example, section 4 of the bill is adding new C.R.S. sections 44-30-1517, 44-30-1518, and 44-30-1519. The amendment is removing section 44-30-1517 from the bill and renumbering the subsequent new sections as 44-30-1517 and 44-30-1518, therefore 44-30-1519 needs to be removed from the amending clause. Any internal references to the removed or renumbered sections also need to be amended.

The bill reads:

> **SECTION 4.** In Colorado Revised Statutes, **add** 44-30-1517, 44-30-1518, and 44-30-1519 as follows:
>
> **44-30-1517. Ballot issue - retain and spend sports betting tax revenue - definition.** (1) As used in this section, "ballot issue" means the question submitted to voters pursuant to subsection (2) of this section.
>
> (2) At the statewide election held in November 2024, the secretary of state shall submit to the registered electors of the state for their approval or rejection the following ballot issue: "Without raising taxes, may the state keep and spend all sports betting tax revenue above voter-approved limits to fund water conservation and protection projects instead of refunding revenue to casinos?"
>
> (3) If a majority of the electors voting on the ballot issue vote "Yes/For", this constitutes voter approval to avoid the potential refund required by section 44-30-1519.
>
> (4) For purposes of section 1-5-407, the ballot issue is a proposition. Section 1-40-106 (3)(d) does not apply to the ballot issue.
>
> **44-30-1518. Sports betting tax refund cash fund - repeal.** (1) The sports betting tax refund cash fund is created in the ...

The amendment reads:

> Page 7, line 1, strike "44-30-1517, 44-30-1518," and substitute "44-30-1517 and 44-30-1518".
>
> Page 7, strike lines 2 through 16 and substitute "as follows:".
>
> Renumber succeeding C.R.S. sections accordingly.
>
> Page 7, line 14, strike "44-30-1519." and substitute "44-30-1518.".

Adding a new C.R.S. section:

> Page 2, after line 5 insert:
>
> "**10-16-1601. Short title.** THE SHORT TITLE OF THIS PART 16 IS THE "MANDATORY HEALTH COVERAGES ACT".".
>
> Renumber succeeding C.R.S. sections accordingly.

Inserting a new subsection:

Page 2, after line 10 insert:

"(4) THIS IS AN ENTIRE SUBSECTION INSERTED AFTER A LINE.".

Renumber succeeding subsections accordingly.

Striking a paragraph:

Page 23, strike lines 7 through 17.

Reletter succeeding paragraphs accordingly.

Internal references to renumbered provisions must also be amended.

Page 2, line 13, strike "(4)" and substitute "(5)".

C.1.4 To Strike, Strike and Substitute, Insert, or Add

There are several ways to strike and add language in an amendment.

The instruction can specify the language to be stricken; strike everything after a word or punctuation; strike everything through a certain word or punctuation, which would include the specified word; or strike an entire line, multiple lines, an entire page, or multiple pages.

An instruction can strike language and substitute language, including striking current law and substituting the same language in strike type or striking new language and substituting different language.

New language can be inserted after a specified word and new language can be added or inserted after a specified punctuation mark. The word "add" should only be used to add language at the end of a paragraph. The word "insert" should be used to insert language *between* two sentences, words, or paragraphs.

Page 3, line 3, after "TWENTY" insert "DOLLARS, THE".

Page 3, line 4, strike "OR LESS THAN THIRTY-FIVE DOLLARS. THE".

Page 3, line 14, after the period add "THIS IS AN ENTIRE SENTENCE ADDED AT THE END OF THE LAST LINE OF A PARAGRAPH.".

Page 3, line 15, strike everything after "BUT".

Page 3, line 17, strike "NINE".

Page 3, line 19, after the period insert "THIS IS ONE OR MORE SENTENCES INSERTED ON A LINE BETWEEN TWO SENTENCES.".

Page 11, line 18, strike "ONE, TWO, THREE, FOUR, FIVE,".

Page 11, strike lines 19 through 26 and substitute "THIS IS A SUBSTITUTION FOR SEVERAL LINES OF A BILL.".

Page 15, line 12, strike everything after the period.

Page 15, strike lines 13 and 14.

Page 15, line 15, strike everything through the period.

Page 19, line 17, strike "TEN".

C.1.5 To Make Multiple Separate Amendments on the Same Line

To amend two or more different provisions on the same line without striking everything in between, separate two instructions with an "and" and separate three or more instructions with commas and an "and" before the last instruction.

Page 23, line 21, after "any" insert "reasonable" and before the period insert "only".

Page 4, line 13, strike "(5.5)(a)(I),", strike "(5.5)(b),", and strike "(18)(b)(I)" and substitute "(18)(b)".

Page 22, line 4, strike "a" and substitute "the", strike "fourteen" and substitute "twenty", and strike "year" and substitute "month".

Note: There are times when a drafter will need to take this approach to avoid a settled question or for other reasons, but this type of amendment can be hard to follow. A more user-friendly amendment would strike the entire line and replace it with the changes.

Page 22, line 4 strike "a" and substitute "the" and before "address" insert "mailing".

C.1.6 Commas In an Amendment Instruction

In an amendment instruction to add or insert language before or after existing language in the bill, don't add a comma to separate the "after/before" language from the language to be inserted or added. In the following example, there should not be a comma after "director".

Page 3, line 6, before "director" insert "executive".

Page 5, line 27, after "or the" insert "collection of payments or".

Page 6, line 5, after "of" insert "payments or".

Page 7, after line 1 insert:

"**SECTION 8.** In Colorado Revised Statutes, 22-2-105, **add** (7) as follows:".

Amend printed bill, page 3, line 14, after "degree" insert "preferably".

Page 4, line 4, after the second "the" insert "public and the".

Page 4, line 15, after "superintendents" insert "and school board members".

Page 22, line 4 strike "a" and substitute "the" and before "address" insert "mailing".

C.1.7 To Amend the Title

An amendment to the title should be placed at the end of an amendment. Changes to the title should appear in bold and small capitals in the same way they appear in the title of the bill. If you add an appropriation or add a substantive provision to the bill that should be identified in the trailer, or if something is identified in the trailer and is removed from the bill, amend the title accordingly.

Page 1, line 102, strike "**NUMBERS**" and substitute "**LETTERS**".

Page 1, line 103, strike "**PROGRAMS.**" and substitute "**PROGRAMS; AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**".

C.2 Amendments to Committee of Reference Reports

Procedurally in the senate, a committee amendment is adopted by the committee of the whole, and then it is amended.

Procedurally in the house, a committee amendment is offered, amended, and then adopted by the committee of the whole. A house committee report *cannot* be amended once it has been adopted on the floor.

C.2.1 To Amend a Committee of Reference Amendment

To amend a committee report, specify the committee name and the date of the report as shown on the report. On the committee report, the committee name may contain an ampersand (&), but when you amend the committee report, spell out the word "and" in the committee name. The name of the committee and the words "Committee Report" should be initial capped.

HB1087_H_AWN.001

HOUSE COMMITTEE OF REFERENCE REPORT

_____ February 9, 2023
Chair of Committee Date

Committee on Agriculture, Water & Natural Resources.

After consideration on the merits, the Committee recommends the following:

_____

Amend the Agriculture, Water, and Natural Resources Committee Report, dated February 9, 2023, page 1, line 25, strike "ONE HUNDRED TWENTY-FIVE" and substitute "SIXTY".

Page 1, line 26, strike "ONE HUNDRED".

Page 1, line 27, strike "TWENTY-FIVE" and substitute "SIXTY".

Page 2, line 7, strike "one hundred".

Page 2, line 8, strike "twenty-five" and substitute "~~one hundred twenty-five~~ SIXTY".

_____

Amend the Health and Human Services Committee Report, dated March 5, 2020, page 1, line 5, strike "services" and substitute "~~services~~".

C.2.2 To Strike a Committee of Reference Report

To strike a committee report in the house, the sponsor must offer the amendment striking the report before the committee report is adopted on the floor; once adopted, the report is

considered a settled question and cannot be amended or stricken. To strike a committee report in the senate, the sponsor must offer the amendment striking the report after the committee report is adopted on the floor.

House or Senate:

> Strike the Finance Committee Report, dated January 14, 2020, and substitute:
>
> "Amend printed bill, page 1, line 5, strike "TEN" and substitute "FIVE".".

Senate only:

> Strike the Finance Committee Report, dated January 14, 2020.
>
> Amend printed bill, page 1, line 5, strike "TEN" and substitute "FIVE".

When striking more than one committee report, strike the most recent report first.

House or Senate:

> Strike the Appropriations Committee Report, dated April 14, 2020, and substitute:
>
> "Strike the Transportation, Housing, and Local Government [or Transportation and Energy] Committee Report, dated February 22, 2020, and substitute:
>
> "Amend printed bill, page 5, line 10, after "NUMBERED" insert "YEARS".".".

Senate only:

> Strike the Appropriations Committee Report, dated April 14, 2020.
>
> Strike the Transportation and Energy Committee Report, dated February 22, 2020.
>
> Amend printed bill, page 5, line 10, after "NUMBERED" insert "YEARS".

C.3 Amendments to Proposed Committee Amendments

Amendments to proposed committee amendments are prepared in the same manner for either house and are drafted for debate while the bill is in committee. The most common purpose of this type of amendment is to provide committee members a means by which to debate various aspects of long, complicated proposed committee amendments by presenting alternatives to the language provided in the proposed amendment. The amendment number is included in parentheses.

Amend proposed committee amendment (SB005_L.004), page 5, line 13, strike "director" and substitute "~~director~~ BOARD".

Page 6, line 3, strike "director" and substitute "~~director~~ BOARD".

Page 6, line 7, strike "director" and substitute "~~director~~ BOARD".

Page 6, line 18, strike "director" and substitute "~~director~~ BOARD".

Amend proposed committee amendment (HB1011_L.012), page 1, line 14, strike "commissioner," and substitute "~~commissioner~~ DIRECTOR,".

Page 3, strike lines 3 through 15 and substitute:

"(c) NEW LANGUAGE ADDED HERE.".

Page 3, line 17, strike "commissioner," and substitute "~~commissioner~~ DIRECTOR,".

Amend proposed committee amendment (HB1013_L.015), page 2, after line 16 insert:

"Page 20 of printed bill, line 3, strike "FIVE" and substitute "SEVEN".

Page 20 of the bill, line 11, strike "FIVE" and substitute "SEVEN".".

Page 2 of the amendment, strike line 21 and substitute "YEARS.".".

Page 2 of the amendment, line 23, after "commissioner" insert "OF INSURANCE".

Page 3 of the amendment, after line 2 insert:

"Page 21 of the bill, after line 5 insert:

"**SECTION 5. Effective date - applicability.** This act takes effect July 1, 2010, and applies to offenses committed on or after said date.".

Renumber succeeding sections accordingly.".

C.4 Amendments to Another Amendment

In an amendment to another amendment, such as a floor amendment to a committee report, always include a reference to the document being amended each time a page number is given. Because there is more than one document that is being amended in such an amendment,

referring to the document being amended at each amendment instruction will increase clarity and reduce ambiguity and confusion.

The first time a document is referred to in the amendment, identify it by its full name, for example: "Amend the Public Health Care and Human Services Committee Report" or "Page 6 of the printed bill" or "Page 3 of the Transportation and Energy Committee Report". Subsequent references to the document can be shortened to, for example, "Page 7 of the bill" or "Page 4 of the report" unless there are two different reports being amended, in which case the full name of each report should be used every time. Language being amended into an existing amendment should be contained within quotation marks.

> Amend the Health and Human Services Committee Report, dated January 30, 2020, page 2, after line 2 insert:
>
> "Page 2 of the printed bill, line 2, strike "appropriate".".
>
> Page 2 of the report, line 3, strike "appropriate,".
>
> Page 2 of the report, line 14, after "beyond the" insert "scope of athletic training or beyond the".
>
> Page 2 of the report, after line 16 insert:
>
> "Page 2 of the bill, line 13, strike "types of injuries and illnesses".
>
> Page 2 of the bill, strike line 14.
>
> Page 3 of the bill, line 27, strike "shall receive".
>
> ———————————————————
>
> Amend the Appropriations Committee Report, dated April 22, 2020, page 1, strike line 1 and substitute:
>
> "Amend the Education Committee Report, dated April 20, 2020, page 1, line 2, strike "10 and substitute:" and substitute "10.".
>
> Page 1 of the Education report, strike lines 3 through 18.
>
> Page 2 of the Education report, strike lines 1 through 28.
>
> Page 4 of the Education report, strike lines 1 through 28.".
>
> Page 3 of the Appropriations report, strike lines 20 through 25.
>
> Page 3 of the Appropriations report, line 26, strike "(b)" and substitute "(a)".

C.5 Striking a Previous Floor Amendment

A previous floor amendment may be stricken in the senate **only** if the bill has not been adopted by the senate on second or third reading. A house floor amendment is considered a settled question once it is adopted and, as with house committee of reference reports, cannot be amended or stricken once it is adopted. To strike a house floor amendment, the amendment to strike it must be offered before the floor amendment at issue is adopted and follows the format of the first example.

C.5.1 To Strike a Previous Floor Amendment on the Same Day in the Senate or House

> Strike the Brown floor amendment (SB100_L.002), and substitute:
>
> "Amend printed bill, page 3, line 9, after "only" insert "OR UPON APPROVAL OF THE DIRECTOR".".

C.5.2 To Strike a Previous Floor Amendment for a Bill, as Amended, That Was Laid over to the next Day in the Senate and Was Not Adopted on Second or Third Reading in the Senate

> Strike the Brown amendment, No. 8 (L.030), as printed in Senate Journal, January 26, page 64, lines 51 through 56, and page 65, lines 1 through 12.
>
> Amend printed bill, page 2, line 12, after the comma insert "WITHIN TWELVE MONTHS".
>
> ———————————————————
>
> Strike the Brown amendment, No. 9 (L.032), as printed in Senate Journal, February 23, page 264, lines 51 through 56, and page 265, lines 1 through 12, and substitute:
>
> "Amend printed bill, page 2, line 12, after the comma insert "WITHIN TWELVE MONTHS".".

C.5.3 To Strike a Previous Floor Amendment for a Bill that has Amendments Approved on Second Reading but the Bill is not yet Adopted on Second Reading and is Referred to a Committee of Reference, as Amended, Prior to Committee of the Whole Action in the Senate

Strike the Shaffer floor amendment, No. 2 (L.005), as printed in Senate Journal, February 22, page 327, lines 62 through 72, pages 328 through 331, and page 332, lines 1 through 10.

C.6 Various Floor Amendments to Bills or Concurrent Resolutions

Amend printed bill, page 1, line 12, after the period add "ANY MUNICIPALITY OR GROUP OF MUNICIPALITIES MAY, IN LIEU OF ESTABLISHING SUCH A PLAN OF RETIREMENT BENEFITS, JOIN IN A PLAN ESTABLISHED AND MAINTAINED UNDER THIS ARTICLE 50.".

Amend printed concurrent resolution, page 2, line 7, strike "~~or counties,~~" and substitute "or counties,".

Amend revised bill, page 1, line 7, strike "COMMISSIONED AND NONCOMMISSIONED OFFICERS,".

Page 1, line 19, after "salaries," insert "FEES,".

Page 2, line 12, strike "ANNUALLY" and substitute "SEMIANNUALLY".

Page 2, line 15, strike "ANNUALLY" and substitute "SEMIANNUALLY".

Page 2, line 16, strike everything after "ANNUALLY".

Page 2, line 17, strike everything before "SALARIES".

Page 2, line 18, strike "fees. The" and substitute "fees; EXCEPT THAT the".

Amend reengrossed bill, page 2, line 3, strike "(5)" and substitute "(6)".

Page 3, line 6, strike "(5)" and substitute "(6)".

Page 4, strike "(4); **repeal** (6)" and substitute "(4)".

Page 4, strike lines 8 through 10.

C.7 Amending a Floor Amendment

House floor amendments can only be amended before the amendment is adopted. Senate floor amendments are amended after the amendment is adopted but before the bill is adopted.

Amend the Smith floor amendment (HB1131_L.005), page 2, line 15, ...

C.8 Strike Everything Below the Enacting Clause ("SEBEC")

When drafting a SEBEC amendment, *do not* specify page or line numbers. Any amendment to the title of the bill is made after the amendments to the body of the bill.

Amend printed bill, strike everything below the enacting clause and substitute:

"**SECTION 1.** In Colorado Revised Statutes, **repeal** article 1 of title 18.

SECTION 2. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.".

Page 1, line 102, strike "**PENALTIES**".

C.9 Senate Amendment to a Committee Report and to the Bill in the Same Amendment

In the Senate, it is permissible to have a single amendment that amends both a committee report and the bill. This can be done in an amendment prepared for a committee or for the floor.

Amend the Finance Committee Report, dated January 20, 2009, page 1, line 6, strike "AN" and substitute "A COMPLETED".

Page 1, line 11, after "register", insert "BY ENDORSEMENT".

Amend printed bill, page 4, line 12, strike "(c)" and substitute "(5)".

Page 4, line 14, strike "(5)" and substitute "(6)"."

C.10 Resolutions and Memorials

Concurrent resolutions are amended in the same manner as bills. *See* section C.6 of this appendix above.

C.10.1 All Resolutions and Memorials Being Amended in the House of Origin

The House and Senate print all resolutions and memorials like bills. All amendments should be written to the printed resolution or memorial.

Amend printed resolution (or memorial), page 1, line 10, strike "expeditiously; and" and substitute "expeditiously as possible; and".

Amend printed joint memorial (or joint resolution), page 3, strike line 4 and substitute "who served his state well and faithfully.".

C.10.2 Joint Resolutions and Joint Memorials Being Amended in the Opposite House

The house and senate prepare copies of all joint resolutions and joint memorials, including the engrossed version if the measure was amended in the house of origin. Amendments should be written to the "hard copy" rather than to the journal. Since resolutions and memorials have only two readings in each house, amendments in the second house should be written to amend the engrossed version rather than a reengrossed version of the resolution or memorial.

Amend engrossed joint resolution (or joint memorial), page 3, line 7, strike "rules and".

Page 4, after line 26 (if line 26 is the last line of the resolution or memorial) add:

"*Be It Further Resolved,* That a copy of this resolution (or memorial) be displayed at an appropriate location in the Senate chamber.".

Amend engrossed joint memorial, page 2, after line 15 insert:

"WHEREAS, It is fitting that we, the members of the Colorado General Assembly, pay tribute to a former member who served his state proudly; and".

Appendix D: Conference Committee Reports

D.1 Sample Conference Committee Reports

Note: When drafting a conference committee report based on the following samples, pay special attention to:

- The **wording of the heading** ("**First** Report of **First** Conference Committee", "First **Majority** Report of First Conference Committee", "First **Minority** Report of First Conference Committee", "**Second** Report of **First** Conference Committee", "**First** Report of **Second** Conference Committee", etc.)
- The **wording of the starred subheading** ("This report **amends**...", "This report **adopts**...", "This report **amends** ... **and is a corrected report**", etc.)
- The **version of the bill** – Does the wording match where needed? Does the report indicate a chamber is receding from amendments to the **rerevised** bill and the committee is amending/adopting the **reengrossed** bill? Etc.

CLSB061.001

FIRST REPORT OF FIRST CONFERENCE COMMITTEE

ON SB99-061

****

THIS REPORT AMENDS THE

REENGROSSED BILL

****

To the President of the Senate and the

Speaker of the House of Representatives:

Your first conference committee appointed on SB99-061, concerning parole of persons sentenced to the department of corrections, has met and reports that it has agreed upon the following:

That the House recede from its [amendments/amendment] made to the bill, as the [amendments appear/amendment appears] in the rerevised bill, and that the following [amendments/amendment] be substituted therefor:

Amend reengrossed bill, page 9, strike lines 9 through 20 and substitute:

"**17-1-105.3. Duties of executive director - parole revocation options plan.** (1) THE EXECUTIVE DIRECTOR SHALL DEVELOP A PLAN SPECIFYING A RANGE OF OPTIONS THAT THE DEPARTMENT MAY IMPLEMENT IN DEALING WITH PERSONS WHO ARE IN CUSTODY AWAITING PAROLE REVOCATION PROCEEDINGS, PAROLEES WHOSE PAROLE HAS BEEN REVOKED, AND PAROLEES WHO HAVE BEEN GRANTED PAROLE AND ARE AWAITING PLACEMENT IN COMMUNITY CORRECTIONS FACILITIES. THE PLAN MAY INCLUDE CONTRACTING FOR THE USE OF A PRIVATELY OWNED AND OPERATED FACILITY TO HOUSE AND PROVIDE SERVICES TO THOSE PERSONS, CONTRACTING WITH COUNTY JAILS TO HOUSE AND PROVIDE SERVICES TO THOSE PERSONS, AND ANY OTHER OPTIONS WHEREBY THE DEPARTMENT MAY SAFELY AND EFFECTIVELY HOUSE AND PROVIDE SERVICES TO THOSE PERSONS.

(2) THE EXECUTIVE DIRECTOR IS HEREBY DIRECTED TO SUBMIT TO THE CAPITAL DEVELOPMENT COMMITTEE ESTABLISHED IN SECTION 2-3-1302 THE PLAN DEVELOPED PURSUANT TO SUBSECTION (1) OF THIS SECTION. THE IMPLEMENTATION OF THE PLAN IS SUBJECT TO APPROVAL BY THE CAPITAL DEVELOPMENT COMMITTEE AND SUBJECT TO ANNUAL APPROPRIATIONS.".

Page 10, line 18, strike "misdemeanor and the final fiscal" and substitute "misdemeanor; and".

Page 10, strike lines 19 through 21.

Respectfully submitted,

Senate Committee:

_____
Chair

_____

_____

House Committee:

_____
Chair

_____

_____

CLHB1061.001

FIRST REPORT OF FIRST CONFERENCE COMMITTEE

ON HB99-1061

****

THIS REPORT AMENDS THE

REENGROSSED BILL

****

To the President of the Senate and the

Speaker of the House of Representatives:

Your first conference committee appointed on HB99-1061, concerning requirements for the payment of unemployment insurance benefits, has met and reports that it has agreed upon the following:

That the Senate recede from its [amendments/amendment] made to the bill, as the [amendments appear/amendment appears] in the rerevised bill, and that the following [amendment/amendments] be substituted therefor:

Amend reengrossed bill, page 3, strike line 22 and substitute:

"(C) THE DIVISION CERTIFIES AND NOTIFIES THE EMPLOYER AND THE HEARING OFFICER THAT NO".

Respectfully submitted,

House Committee:

_____
Chair

_____

_____

Senate Committee:

_____
Chair

_____

_____

CLSB006.001

FIRST REPORT OF FIRST CONFERENCE COMMITTEE

ON SB99-006

****

THIS REPORT AMENDS THE

REREVISED BILL

****

To the President of the Senate and the

Speaker of the House of Representatives:

Your first conference committee appointed on SB99-006, concerning payments for continuing care, has met and reports that it has agreed upon the following:

That the Senate accede to the House [amendments/amendment] made to the bill, as the [amendments appear/amendment appears] in the rerevised bill, with the following changes:

Amend rerevised bill, page 4, line 7, strike "THE" and substitute "WITH RESPECT TO AN ENROLLEE RETURNING TO THE LOCATION WHERE THE CONTINUING CARE SERVICES ARE TO BE PROVIDED PURSUANT TO THIS SECTION, THE".

Page 4, strike lines 25 and 26.

Page 5, strike lines 1 through 4.

Respectfully submitted,

Senate Committee:	House Committee:
_____	_____
Chair	Chair
_____	_____
_____	_____

Note: In this example, all of the amendments are made under the authority to go "beyond the scope of the differences" between the two chambers.

CLSB041.002

FIRST REPORT OF FIRST CONFERENCE COMMITTEE

ON SB99-041

****

THIS REPORT AMENDS THE

REREVISED BILL

****

To the President of the Senate and the

Speaker of the House of Representatives:

Your first conference committee appointed on SB99-041, concerning traffic regulations relating to bicycles, has met and reports that it has agreed upon the following:

1. That the Senate accede to the House [amendments/amendment] made to the bill, as the [amendments appear/amendment appears] in the rerevised bill.

2. That, under the authority granted the committee to consider matters not at issue between the two houses, the following [amendment/amendments] be recommended:

Amend rerevised bill, page 1, strike lines 2 through 9.

Page 2, strike lines 1 through 23.

Renumber succeeding sections accordingly.

Respectfully submitted,

Senate Committee:	House Committee:
_____	_____
Chair	Chair
_____	_____
_____	_____

Note: This example shows both an amendment that is "within the scope of the differences" between the two chambers and an amendment that is "beyond the scope of the differences".

CLSB039.001

FIRST REPORT OF FIRST CONFERENCE COMMITTEE

ON SB99-039

****

THIS REPORT AMENDS THE

REREVISED BILL

****

To the President of the Senate and the

Speaker of the House of Representatives:

Your first conference committee appointed on SB99-039, concerning reporting of dropout rates of students in secondary schools in the state, has met and reports that it has agreed upon the following:

1. That the Senate accede to the House [amendments/amendment] made to the bill, as the [amendments appear/amendment appears] in the rerevised bill, with the following changes:

Amend rerevised bill, page 1, line 7, strike "leaves school for any reason," and substitute "~~leaves~~ IS THE SUBJECT OF NOTIFICATION TO A SCHOOL OR SCHOOL DISTRICT THAT THE PERSON HAS LEFT OR WILL LEAVE school for any reason, OR THE PERSON HAS".

Page 1, line 8, strike "INCLUDING HAVING".

2. That, under the authority granted the committee to consider matters not at issue between the two houses, the following [amendment/amendments] be recommended:

Amend rerevised bill, page 2, line 22, after the period add "THE RULES MUST ALSO SET FORTH UNIFORM STANDARDS FOR DETERMINING WHICH SCHOOL OR SCHOOL DISTRICT SHALL COUNT A DROPOUT AS PART OF ITS OWN DROPOUT COUNT.".

Respectfully submitted,

Senate Committee:

_____
Chair

_____

_____

House Committee:

_____
Chair

_____

_____

Note: In this example, the conference committee members wanted to strike something from the reengrossed bill that had not been amended in the second chamber. Therefore, the issue was "beyond the scope of the differences" between the two chambers. The conferees decided the Senate (second chamber) would recede, then strike the language from the reengrossed bill with permission to go beyond the scope.

CLHB1017.001

FIRST REPORT OF FIRST CONFERENCE COMMITTEE

ON HB99-1017

****

THIS REPORT AMENDS THE

REENGROSSED BILL

****

To the President of the Senate and the

Speaker of the House of Representatives:

Your first conference committee appointed on HB99-1017, concerning appeals of disputed individual responsibility contracts under the Colorado works program, has met and reports that it has agreed upon the following:

1. That the Senate recede from its [amendments/amendment] made to the bill, as the [amendments appear/amendment appears] in the rerevised bill.

2. That, under the authority granted the committee to consider matters not at issue between the two houses, the following [amendment/amendments] be recommended:

Amend reengrossed bill, page 2, line 25, strike "(a)".

Page 3, strike lines 13 through 26.

Page 4, strike lines 1 and 2.

Respectfully submitted,

House Committee:

_____
Chair

_____

_____

Senate Committee:

_____
Chair

_____

_____

CLHB1035.001

FIRST REPORT OF FIRST CONFERENCE COMMITTEE

ON HB99-1035

****

THIS REPORT ADOPTS THE

REENGROSSED BILL

****

To the President of the Senate and the

Speaker of the House of Representatives:

Your first conference committee appointed on HB99-1035, concerning administrative action affecting the driving privileges of a person under twenty-one years of age in connection with conduct involving alcohol, has met and reports that it has agreed upon the following:

That the Senate recede from its [amendments/amendment] made to the bill and that the reengrossed bill be adopted without change.

Respectfully submitted,

House Committee:	Senate Committee:
_____	_____
Chair	Chair
_____	_____
_____	_____

CLSB080.001

FIRST REPORT OF FIRST CONFERENCE COMMITTEE

ON SB99-080

****

THIS REPORT ADOPTS THE

REREVISED BILL

****

To the President of the Senate and the

Speaker of the House of Representatives:

Your first conference committee appointed on SB99-080, concerning the protection afforded to state employees from retaliation for disclosure of information, has met and reports that it has agreed upon the following:

That the Senate accede to the House [amendments/amendment] made to the bill and that the rerevised bill be adopted without change.

Respectfully submitted,

Senate Committee:	House Committee:
_____	_____
Chair	Chair
_____	_____
_____	_____

Note: In this example, the conference committee members are requesting that no new conference committee be appointed.

CLSB426.001

FIRST REPORT OF FIRST CONFERENCE COMMITTEE

ON SB99-426

To the President of the Senate and the

Speaker of the House of Representatives:

Your first conference committee appointed on SB99-426, concerning elections, has met and reports that it has agreed upon the following:

That it is unable to reach an agreement upon the differences between the two houses and that it asks to be discharged and that no new conference committee be appointed.

Respectfully submitted,

Senate Committee:	House Committee:
_____	_____
Chair	Chair
_____	_____
_____	_____

Note: In this example, the conference committee members are requesting appointment of a second conference committee.

CLSB072.001

FIRST REPORT OF FIRST CONFERENCE COMMITTEE

ON SB99-072

To the President of the Senate and the

Speaker of the House of Representatives:

Your first conference committee appointed on SB99-072, concerning requirements for access to the primary election ballot by petition, has met and reports that it has agreed upon the following:

That it is unable to reach an agreement upon the differences between the two houses and that it asks to be discharged and that a second conference committee be appointed.

Respectfully submitted,

Senate Committee:	House Committee:
_____	_____
Chair	Chair
_____	_____
_____	_____

Note: It is rare to draft a "majority report". Typically, a CC report is drafted as normal that at least 4 members will sign; then, a "minority report" is requested by/for the other 2 members.

CLHB1078.001

FIRST MAJORITY REPORT OF FIRST CONFERENCE

COMMITTEE ON HB99-1078

****

THIS REPORT AMENDS THE

REENGROSSED BILL

****

To the President of the Senate and the

Speaker of the House of Representatives:

Your first conference committee appointed on HB99-1078, concerning motor vehicle repair garages, has met, and a majority thereof reports that it has agreed upon the following:

That the Senate recede from its [amendments/amendment] made to the bill, as the [amendments appear/amendment appears] in the rerevised bill, and that the following [amendment/amendments] be substituted therefor:

Amend reengrossed bill, page 1, line 7, strike "ONE HUNDRED" and substitute "SEVENTY-FIVE".

Respectfully submitted,

House Committee:	Senate Committee:
_____	_____
Chair	Chair
_____	_____
_____	_____

CLSB022.001

FIRST MINORITY REPORT OF FIRST CONFERENCE

COMMITTEE ON SB99-022

****

THIS REPORT AMENDS THE

REREVISED BILL

****

To the President of the Senate and the

Speaker of the House of Representatives:

Your first conference committee appointed on SB99-022, concerning the regulatory authority of the division of securities, has met, and a minority thereof reports that it has agreed upon the following:

1. That the Senate accede to the House [amendments/amendment] made to the bill, as the [amendments appear/amendment appears] in the rerevised bill, with the following changes:

Amend rerevised bill, page 7, strike lines 1 through 4 and substitute:

"**SECTION 6.** In Colorado Revised Statutes, 11-51-604, **amend** (4) and (5)(c); and **add** (14) as follows:

11-51-604. Civil liabilities. (4) Any person who sells a security, EXCEPT FOR A SECURITY EXEMPT PURSUANT TO SECTION 11-51-307 (1)(a) OTHER THAN A BOND AS DEFINED IN SECTION 11-59-103 (2) THAT IS ISSUED BY A DISTRICT AS DEFINED IN SECTION 11-59-103 (6), in violation of section 11-51-501 (1)(b) (the buyer not knowing of the untruth or omission) and who does not sustain the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the untruth or omission is liable to the person buying the security from such person, who may sue to recover the consideration paid for the security, together with interest at the statutory rate from the date of payment, costs, and reasonable attorney fees, less the amount of any income received on the security, upon the tender of the security, or is liable for damages if the buyer no longer owns the security. Damages are deemed to be the amount that would be recoverable upon a tender, less the value of the security when the buyer disposed of it, and interest at the statutory rate from the date of disposition.

(5) (c) ~~Any person who knows that another person liable under subsection (3) or (4) of this section is engaged in conduct which constitutes a violation of section 11-51-501 and who gives substantial assistance to such conduct is jointly and severally liable to the same extent as such other person.~~

(14) IN THE CASE OF A".

Page 15, line 24, strike "SEVEN" and substitute "FIVE".

Page 23, after line 17 insert:

"(c) THE SECURITIES COMMISSIONER MAY, BY RULE OR ORDER, PROVIDE MEANS BY WHICH BONDHOLDERS, AT THEIR EXPENSE, MAY COMMUNICATE WITH THE HOLDERS OF BONDS OF THE SAME DISTRICT SO LONG AS THE CONFIDENTIALITY OF THE NAMES AND ADDRESSES OF THE BONDHOLDERS IS PROTECTED.".

2. That, under the authority granted the committee to consider matters not at issue between the two houses, the following amendment be recommended:

Amend rerevised bill, page 19, after line 14 insert:

"**SECTION 12.** In Colorado Revised Statutes, 11-51-802 **add** (1.5) as follows:

11-51-802. Savings provisions. (1.5) SUBSECTIONS (4) AND (5)(c) OF SECTION 11-51-604, AS THOSE SUBSECTIONS EXISTED PRIOR TO JULY 1, 1994, APPLY TO ALL SUITS, ACTIONS, OR PROCEEDINGS THAT ARE PENDING OR MAY BE INITIATED ON THE BASIS OF FACTS OR CIRCUMSTANCES OCCURRING PRIOR TO JULY 1, 1994; EXCEPT THAT NO CIVIL SUIT OR ACTION MAY BE MAINTAINED TO ENFORCE ANY LIABILITY UNDER SUCH PRIOR LAW UNLESS BROUGHT WITHIN ANY PERIOD OF LIMITATION THAT APPLIED WHEN THE CAUSE OF ACTION ACCRUED.".

Renumber succeeding sections accordingly.

Respectfully submitted,

Senate Member: House Member:

_____ _____

CLHB1207.002

FIRST MINORITY REPORT OF FIRST

CONFERENCE COMMITTEE ON HB99-1207

****

THIS REPORT ADOPTS THE

REREVISED BILL

****

To the President of the Senate and the

Speaker of the House of Representatives:

Your first conference committee appointed on HB99-1207, concerning the reduction of the state income tax rate, and, in connection therewith, making an appropriation, has met, and a minority thereof reports that it has agreed upon the following:

That the House accede to the Senate [amendments/amendment] made to the bill and that the rerevised bill be adopted without change.

Respectfully submitted,

House Member: Senate Member:

_____ _____

Note: A conference committee can only issue a second report in the form of a *corrected* report addressing any mistake(s) in the first report.

CLSB028.002

SECOND REPORT OF FIRST CONFERENCE COMMITTEE

ON SB99-028

****

THIS REPORT AMENDS THE

REREVISED BILL

AND IS A CORRECTED REPORT

****

To the President of the Senate and the

Speaker of the House of Representatives:

Your first conference committee appointed on SB99-028, concerning imposition of policies concerning student fees, has met and reports that it has agreed upon the following:

1. That the Senate accede to the House [amendments/amendment] made to the bill, as the [amendments appear/amendment appears] in the rerevised bill.

2. That, under the authority granted the committee to consider matters not at issue between the two houses, the following [amendment/amendments] be recommended:

Amend rerevised bill, page 2, line 21, after "(I)" insert "(A)".

Page 2, strike lines 24 and 25 and substitute "BOARD MAY ASSESS A USER FEE AGAINST PERSONS USING THE AUXILIARY".

Page 3, line 2, strike "FACILITY; AND" and substitute "FACILITY.".

Page 3, strike lines 3 through 26 and substitute:

"(B) IF A GOVERNING BOARD USES REVENUES FROM A GENERAL STUDENT FEE FOR THE REPAYMENT OF BONDS OR OTHER DEBT OBLIGATIONS ISSUED OR INCURRED PURSUANT TO THIS SUBSECTION (5)(a), THE GOVERNING BOARD SHALL SPECIFY THE PORTION OF THE GENERAL STUDENT FEE THAT IS ACTUALLY APPLIED TO REPAYMENT OF THE BONDS OR OTHER DEBT OBLIGATIONS. THE ITEMIZATION OF ANY GENERAL STUDENT FEE, ALL OR A PORTION OF WHICH IS USED FOR REPAYMENT OF BONDS OR OTHER DEBT OBLIGATIONS, MUST APPEAR ON THE STUDENT BILLING STATEMENT.".

Page 4, strike lines 1 through 15 and substitute:

"(II) WHILE BONDS OR OTHER DEBT OBLIGATIONS ISSUED OR INCURRED PURSUANT TO THIS SUBSECTION (5)(a) REMAIN OUTSTANDING, THE ISSUING OR INCURRING GOVERNING BOARD MAY, SUBJECT TO THE RESTRICTIONS SPECIFIED IN SUBSECTION (5)(c) OF THIS SECTION, PLEDGE ANY EXCESS REVENUE RECEIVED FROM ANY USER FEE ASSESSED PURSUANT TO SUBSECTION (5)(a)(I) OF THIS SECTION OR FROM ANY PORTION OF A GENERAL STUDENT FEE APPLIED TO THE REPAYMENT OF SUCH BONDS OR OTHER DEBT OBLIGATIONS PURSUANT TO SUBSECTION (5)(a)(I)(B) OF THIS SECTION TO THE REPAYMENT OF ANY BONDS OR OTHER DEBT OBLIGATIONS ISSUED OR INCURRED ON BEHALF OF ANY OTHER AUXILIARY FACILITY; EXCEPT THAT THE PLEDGE OF ANY SUCH EXCESS REVENUE TERMINATES UPON FULL REPAYMENT OF THE BONDS OR OTHER DEBT OBLIGATIONS ORIGINALLY INCURRED FOR THE SPECIFIC PROJECT, OR SUBSEQUENTLY ISSUED OR INCURRED TO REFUND ANY BONDS OR OTHER DEBT OBLIGATIONS ISSUED OR INCURRED FOR THE SPECIFIC PROJECT, ON BEHALF OF THE PLEDGING AUXILIARY FACILITY.".

Page 4, line 16, strike "(IV)" and substitute "(III)".

Respectfully submitted,

Senate Committee:

_____
Chair

_____

_____

House Committee:

_____
Chair

_____

_____

CLHB1198.002

FIRST REPORT OF SECOND CONFERENCE COMMITTEE

ON HB99-1198

****

THIS REPORT AMENDS THE

REREVISED BILL

****

To the President of the Senate and the

Speaker of the House of Representatives:

Your second conference committee appointed on HB99-1198, concerning the invalidity of certain marriages, has met and reports that it has agreed upon the following:

That the House accede to the Senate [amendments/amendment] made to the bill, as the [amendments appear/amendments appear] in the rerevised bill, with the following changes:

Amend rerevised bill, page 1, strike lines 3 through 10 and substitute "as follows:

14-2-104. Formalities. (1) A marriage ~~between a man and a woman licensed, solemnized, and registered as provided in this part 1~~ is valid in this state IF:

(a) IT IS LICENSED, SOLEMNIZED, AND REGISTERED AS PROVIDED IN THIS PART 1; AND

(b) IT IS ONLY BETWEEN ONE MAN AND ONE WOMAN.".

Page 2, strike line 1 and substitute "MARRIAGE CONTRACTED WITHIN OR OUTSIDE THIS STATE THAT DOES NOT SATISFY SUBSECTION (1)(b) OF THIS SECTION".

Respectfully submitted,

House Committee:	Senate Committee:
_____	_____
Chair	Chair
_____	_____
_____	_____

CLHB1037.002

FIRST REPORT OF SECOND CONFERENCE COMMITTEE

ON HB99-1037

****

THIS REPORT AMENDS THE

REREVISED BILL

****

To the President of the Senate and the

Speaker of the House of Representatives:

Your second conference committee appointed on HB99-1037, concerning commissions that evaluate judicial performance, has met and reports that it has agreed upon the following:

That the House accede to the Senate [amendments/amendment] made to the bill, as the [amendments appear/amendments appear] in the rerevised bill, with the following changes:

Amend rerevised bill, page 4, strike line 23 and substitute "SPECIFY WHEN AND HOW STATISTICALLY INVALID SURVEYS MAY BE USED and to".

Page 8, strike line 14 and substitute "C.R.S.".

Page 8, line 22, strike "C.R.S., SUBJECT TO THE AVAILABILITY OF FUNDS." and substitute "C.R.S.".

Page 8, strike lines 23 through 26.

Page 9, strike lines 1 and 2.

Page 9, strike line 9 and substitute "ELECTION.".

Page 9, line 12, strike "YEAR, SUBJECT TO THE" and substitute "YEAR.".

Page 9, strike line 13.

Page 10, strike lines 6 through 9 and substitute:

"**SECTION 7. Transfer of funds - statement of intent.** (1) Notwithstanding any provision of section 24-21-104 (3)(b), Colorado Revised Statutes, to the contrary, on July 1, 1997, the state treasurer shall deduct sixteen thousand dollars ($16,000) from the department of state cash fund and transfer such sum to the ballot information publication and distribution revolving fund created in section 1-40-124.5 (3), Colorado Revised Statutes.

(2) It is the intent of the general assembly that, for the fiscal year beginning July 1, 1998, printing the recommendations in the blue book as required by this act will require an appropriation to the legislative council of fifty-six thousand dollars ($56,000). Of such amount, forty thousand dollars ($40,000) shall come from the general fund money that would otherwise have been appropriated to the judicial department for the fiscal year beginning July 1, 1998, and sixteen thousand ($16,000) shall come from money transferred to the ballot information publication and distribution revolving fund pursuant to subsection (1) of this section.".

Respectfully submitted,

House Committee:

_____
Chair

_____

_____

Senate Committee:

_____
Chair

_____

_____

CLHJR1017.001

FIRST REPORT OF FIRST CONFERENCE COMMITTEE

ON HJR99-1017

****

THIS REPORT AMENDS THE

ENGROSSED JOINT

RESOLUTION

****

To the President of the Senate and the

Speaker of the House of Representatives:

Your first conference committee appointed on HJR99-1017, concerning the contributions of Continental Airlines to Colorado, has met and reports that it has agreed upon the following:

That the Senate recede from its [amendments/amendment] made to the resolution, as the [amendments appear/amendment appears] in the revised joint resolution, and that the following amendments [amendment] be substituted therefor:

Amend engrossed resolution, page 2, line 11, strike "(1)".

Page 2, line 18, strike "Airlines; and" and substitute "Airlines.".

Page 2, strike lines 19 through 22.

Respectfully submitted,

House Committee:	Senate Committee:
_____	_____
Chair	Chair
_____	_____
_____	_____

D.2 Conference Committee Options for House Bills[1]

Stage of Proceedings	Possible Actions	Results
1. Consideration of Senate amendments **Rules** HR 36 JR 4	House concurs in Senate amendments, readopts bill	Bill delivered to Governor
	House rejects Senate amendments, adheres to House position	Senate recedes, readopts bill; Bill delivered to Governor
		Senate adheres; bill dies
	House rejects Senate amendments, requests conference committee (CC)	House and Senate appoint conferees
2. Conference committee appointed, meets **Rules** HR 36(c) JR 5 JR 6(a)	Prior to consideration of CC report: House votes to recede, readopt bill	Bill delivered to Governor
	Prior to consideration of CC report: House votes to adhere	Senate recedes, readopts bill; Bill delivered to Governor
		Senate adheres; bill dies
	Prior to delivery of CC report: Senate votes to recede, readopt bill	Bill delivered to Governor
	Prior to delivery of CC report: Senate votes to adhere	House recedes, readopts bill; Bill delivered to Governor
		House adheres; bill dies

[1] As an aid to reading the rules relating to conference committees, please note that in nearly all circumstances involving House bills, the House will be the "requesting house" and the Senate will be the "assenting house".

<table>
<tr><th>Stage of Proceedings</th><th>Possible Actions</th><th>Results</th></tr>
<tr><td colspan="3">Note: After one day of actual session following the referral of a bill to CC, either chamber, by majority vote, can demand that the CC meet within 2 days after the demand; except that within the last 5 days of session, the CC must meet on the same day as the demand. If the CC doesn't meet, the CC is discharged and the chambers may appoint a second CC, or either chamber may adhere. (JR 7)</td></tr>
<tr><td rowspan="6">3. CC report delivered to Senate

Rules

HR 36(c)

JR 6(b)</td><td rowspan="2">Senate votes to adhere</td><td>House recedes, readopts bill;
Bill delivered to Governor</td></tr>
<tr><td>House adheres; bill dies</td></tr>
<tr><td>Senate votes to recede, readopt bill</td><td>Bill delivered to Governor</td></tr>
<tr><td rowspan="3">Senate rejects CC report, dissolves 1st CC, appoints 2nd CC

(Note: Can only have 2 CCs max.)</td><td>House agrees, appoints 2nd CC

(Return to Stage #2)</td></tr>
<tr><td>House does not agree to 2nd CC;
Senate may:

1. adhere;

2. recede, readopt bill; or

3. reconsider rejection, adopt report</td></tr>
<tr><td>(By next day of actual session)

House recedes, readopts bill;

Bill delivered to Governor</td></tr>
<tr><td>Senate adopts CC report, readopts bill</td><td>Bill delivered to House for action</td></tr>
<tr><td>4. CC report adopted by Senate, delivered to House</td><td>House votes to adhere</td><td>Senate reconsiders adoption of CC report, recedes, readopts bill;

Bill delivered to Governor</td></tr>
</table>

Stage of Proceedings	Possible Actions	Results
Rules JR 6(c)		Senate does not reconsider adoption of CC report; bill dies
	House votes to recede, readopt bill	Senate reconsiders adoption of CC report, readopts bill; Bill delivered to Governor
	House rejects CC report, appoints 2nd CC	(No later than next day of actual session) Senate reconsiders adoption of CC report, appoints 2nd CC (Return to Stage #2)
		Senate does not agree to 2nd CC; House may: 1. adhere; 2. recede, readopt bill; or 3. reconsider rejection, adopt report
	House adopts CC report, readopts bill	Bill delivered to Governor

D.3 Conference Committee Options for Senate Bills

Stage of Proceedings	Possible Actions	Results
1. Consideration of House amendments	Senate concurs in House amendments, readopts bill	Bill delivered to Governor
Rules	Senate rejects House amendments,	House recedes, readopts bill;

<table>
<tr><td rowspan="3">SR 19
JR 4</td><td rowspan="2">adheres to Senate position</td><td>Bill delivered to Governor</td></tr>
<tr><td>House adheres; bill dies</td></tr>
<tr><td>Senate rejects House amendments, requests conference committee (CC)</td><td>Senate and House appoint conferees</td></tr>
<tr><td rowspan="5">2. Conference committee appointed, meets
Rules
JR 5
JR 6(a)</td><td>Prior to consideration of CC report:
Senate votes to recede, readopt bill</td><td>Bill delivered to Governor</td></tr>
<tr><td rowspan="2">Prior to consideration of CC report:
Senate votes to adhere</td><td>House recedes, readopts bill;
Bill delivered to Governor</td></tr>
<tr><td>House adheres; bill dies</td></tr>
<tr><td>Prior to delivery of CC report:
House votes to recede, readopt bill</td><td>Bill delivered to Governor</td></tr>
<tr><td rowspan="2">Prior to delivery of CC report:
House votes to adhere</td><td>Senate recedes, readopts bill;
Bill delivered to Governor</td></tr>
<tr><td>Senate adheres; bill dies</td></tr>
<tr><td colspan="3">Note: After one day of actual session following the referral of a bill to CC, either chamber, by majority vote, can demand that the CC meet within 2 days after the demand; except that within the last 5 days of session, the CC must meet on the same day as the demand. If the CC doesn't meet, the CC is discharged and the chambers may appoint a second CC, or either chamber may adhere. (JR 7)</td></tr>
<tr><td rowspan="3">3. CC report delivered to House
Rules
JR 6(b)</td><td rowspan="2">House votes to adhere</td><td>Senate recedes, readopts bill;
Bill delivered to Governor</td></tr>
<tr><td>Senate adheres; bill dies</td></tr>
<tr><td>House votes to recede, readopt bill</td><td>Bill delivered to Governor</td></tr>
</table>

	House rejects CC report, dissolves 1st CC, appoints 2nd CC (Note: Can only have 2 CCs max.)	Senate agrees, appoints 2nd CC (Return to Stage #2)
		Senate does not agree to 2nd CC; House may: 1. adhere; 2. recede, readopt bill; or 3. reconsider rejection, adopt report
	House adopts report, readopts bill	Bill delivered to Senate for action
4. CC report adopted by House, delivered to Senate **Rules** JR 6(c)	Senate votes to adhere	House reconsiders adoption of CC report, recedes, readopts bill; Bill delivered to Governor
		House does not reconsider adoption of CC report; bill dies
	Senate votes to recede, readopt bill	House reconsiders adoption of CC report, readopts bill; Bill delivered to Governor
	Senate rejects CC report, appoints 2nd CC	(No later than next day of actual session) House reconsiders adoption of CC report, appoints 2nd CC (Return to Stage #2)
		House does not agree to 2nd CC; Senate may: 1. adhere; 2. recede, readopt bill; or 3. reconsider rejection, adopt report

	Senate adopts CC report, readopts bill	Bill delivered to Governor

Appendix E: Sample Appropriation Clauses

The following examples of appropriation clauses are organized based on the WordPerfect macro used by OLLS and JBC staff for creating appropriation clauses. The first level of the macro is organized into 7 main categories, all of which include subcategories. The 7 main categories include 6 categories of clauses most commonly used by JBC staff and 1 final category featuring all of the remaining clauses. The category descriptions preceding the clauses are the same used for the macro buttons, and the examples are derived from the macro.

Notes:

- The inclusion of "C.R.S." (set off with commas) after a reference to a section number is convention for appropriation clauses and does not need to be removed
- Appropriation amounts should be written out in CRS statutory sections, but dollar signs ($) and digits should be used in appropriation clauses
- Double-check that all dollar amount breakdowns correctly add up to the relevant total appropriation amount

---

E.1 Appropriation to Single Department - Purpose(s) Specified

E.1.1 Multiple Purposes - General Fund - Paragraph Format

SECTION #. Appropriation. (1) For the 2021-22 state fiscal year, $1,401,000 is appropriated to the department of education for use by the school for the deaf and the blind. This appropriation is from the general fund. To implement this act, the school may use this appropriation as follows:

(a) $100,000 for personal services, which amount is based on an assumption that the school will require an additional 3.5 FTE;

(b) $301,000 for outreach services; and

(c) $1,000,000 for grants.

E.1.2 Multiple Purposes - Cash Fund - Paragraph Format

SECTION #. Appropriation. (1) For the 2021-22 state fiscal year, $670,000 is appropriated to the department of labor and employment. This appropriation is from the employment support fund created in section 8-77-109 (1)(a)(I), C.R.S. To implement this act, the department may use this appropriation as follows:

(a) $400,000 for use by the executive director's office for personal services, which amount is based on an assumption that the office will require an additional 2.7 FTE;

(b) $166,000 for use by the division of unemployment insurance for employment and training technology initiatives; and

(c) $204,000 for use by the division of unemployment insurance for program costs.

E.1.3 Multiple Purposes - Column Format Synched with Long Bill

SECTION #. Appropriation. (1) For the 2021-22 state fiscal year, $1,272,133 is appropriated to the judicial department. This appropriation is from the general fund and is based on an assumption that the department will require an additional 14.2 FTE. To implement this act, the department may use this appropriation as follows:

Trial courts	
Trial court programs	$700,394 (8.8 FTE)
Probation and related services	
Probation programs	$152,261 (2.3 FTE)
Centrally-administered programs	
Courthouse capital and infrastructure maintenance	$231,126
Office of the state public defender	
Personal services	$184,970 (3.1 FTE)
Operating expenses	$2,945
Attorney registration	$437

E.1.4 Single Purpose - General Fund

SECTION #. Appropriation. For the 2021-22 state fiscal year, $26,312 is appropriated to the department of revenue for use by the taxpayer service division. This appropriation is from the general fund and is based on an assumption that the division will require an additional 0.8 FTE. To implement this act, the division may use this appropriation for personal services.

E.1.5 Single Purpose - Cash Fund

SECTION #. Appropriation. For the 2021-22 state fiscal year, $35,000 is appropriated to the department of public health and environment for use by the hazardous materials and waste management division. This appropriation is from the hazardous waste service fund created in section 25-15-304, C.R.S., and is based on an assumption that the division will require an additional 0.3 FTE. To implement this act, the division may use this appropriation for personal services related to the hazardous waste control program.

E.1.6 Single Purpose - Multisource

SECTION #. Appropriation. For the 2021-22 state fiscal year, $18,800 is appropriated to the department of human services for use by the division of youth services. This appropriation consists of $9,400 from the general fund and $9,400 from the sex offender surcharge fund created in section 18-21-103 (3), C.R.S. To implement this act, the division may use this appropriation for juvenile sex offender staff training.

E.1.7 Multiple Purposes - Multisource

SECTION #. Appropriation. (1) For the 2021-22 state fiscal year, $600,000 is appropriated to the department of natural resources for use by the division of water resources. This appropriation consists of $400,000 from the general fund and $200,000 from the water resources cash fund created in section 37-80-111.7 (1), C.R.S. To implement this act, the division may use this appropriation as follows:

(a) $400,000, which consists of $200,000 from general fund and $200,000 from the water resources cash fund, for well inspection, which amount is based on an assumption that the department will require an additional 1.7 FTE; and

(b) $200,000 from the general fund for the satellite monitoring system.

E.2 Purpose(s) Not Specified - Line Item is a State Agency

E.2.1 General Fund

SECTION #. Appropriation. For the 2021-22 state fiscal year, $26,312 is appropriated to the judicial department for use by the office of judicial performance evaluation. This appropriation is from the general fund and is based on an assumption that the department will require an additional 0.8 FTE. The office may use this appropriation to implement this act.

E.2.2 Cash Fund

SECTION #. Appropriation. For the 2021-22 state fiscal year, $35,000 is appropriated to the department of public health and environment. This appropriation is from the medication administration cash fund created in section 25-1-107 (1)(ee)(VI)(A), C.R.S., and is based on an assumption that the department will require an additional 0.3 FTE. The department may use this appropriation to implement this act.

E.2.3 Multisource

SECTION #. Appropriation. For the 2021-22 state fiscal year, $18,800 is appropriated to the department of human services. This appropriation consists of $9,400 from the general fund and $9,400 from the child care licensing cash fund created in section 26-6-105 (4), C.R.S., and is based on an assumption that the department will require an additional 0.2 FTE. The department may use this appropriation to implement this act.

E.3 Adjust Long Bill Appropriation

E.3.1 Single Line Item Reduction

E.3.1.1 General Fund

SECTION #. Appropriation - adjustments to 2021 long bill. To implement this act, the general fund appropriation made in the annual general appropriation act for the 2021-22 state fiscal year to the department of human

services for use by the office of information technology services for microcomputer lease payments is decreased by $174,292.

E.3.1.2 Cash Fund

SECTION #. Appropriation - adjustments to 2021 long bill. To implement this act, the cash funds appropriation from the well inspection cash fund created in section 38-80-111.5 (1)(d), C.R.S., made in the annual general appropriation act for the 2021-22 state fiscal year to the department of natural resources for well inspection is decreased by $98,786, and the related FTE is decreased by 1.2 FTE.

E.3.2 Long Bill Adjustment Only

SECTION #. Appropriation - adjustments to 2021 long bill. (1) To implement this act, appropriations made in the annual general appropriation act for the 2021-22 state fiscal year to the department of public health and environment for use by the water quality division are adjusted as follows:

(a) The general fund appropriation for administration is decreased by $8,955, and the related FTE is decreased by 0.3 FTE;

(b) The cash funds appropriation from the water quality improvement fund created in section 25-8-608 (1.5), C.R.S., for water quality improvement is decreased by $35,722; and

(c) The appropriation for personal services in the drinking water program is increased by $44,727, which consists of $34,700 from the general fund and $10,027 from the drinking water cash fund created in section 25-1.5-209 (2), C.R.S., and which total amount is based on an assumption that the division will require an additional 1.2 FTE.

E.3.3 Long Bill Adjustment and New Appropriation

SECTION #. Appropriation - adjustments to 2021 long bill. (1) To implement this act, appropriations made in the annual general appropriation act for the 2021-22 state fiscal year to the department of human services are adjusted as follows:

(a) The general fund appropriation for use by the office of self sufficiency for personal services related to administration is decreased by $28,965, and the related FTE is decreased by 1.5 FTE; and

(b) The cash funds appropriation from the adolescent substance abuse prevention and treatment fund created in section 18-13-122 (16), C.R.S., for treatment and detoxification programs is decreased by $37,008.

(2) For the 2021-22 state fiscal year, $27,500 is appropriated to the department of human services for use by the division of youth services. This appropriation is from the general fund. To implement this act, the division may use this appropriation as follows:

(a) $17,500 for personal services related to institutional programs, which amount is based on an assumption that the division will require an additional 0.4 FTE; and

(b) $10,000 for operating expenses related to institutional programs.

E.3.4 Column Format Synched with Long Bill

SECTION #. Appropriation - adjustments to 2021 long bill. (1) To implement this act, general fund appropriations made in the annual general appropriation act for the 2021-22 state fiscal year to the judicial department and the related FTE are increased as follows:

Courts administration, administration and technology	
General courts administration	$64,211 (0.8 FTE)
Trial courts	
Trial court programs	$109,558 (2.3 FTE)
Court costs, jury costs, and court-appointed counsel	$4,986,663

(2) To implement this act, general fund appropriations made in the annual general appropriation act for the 2020-21 state fiscal year to the judicial department and the related FTE are decreased as follows:

Office of the respondent parents' counsel	
Personal services	$479,386 (4.2 FTE)
Health, life, and dental	$18,790
S.B. 06-235 supplemental amortization	
Equalization disbursement	$16,770
Operating expenses	$13,113
Case management system	$215,625
Training	$15,000
Court-appointed counsel	$4,986,663

E.3.5 Reduce the Capital Construction Appropriation and New Appropriation

SECTION #. Capital construction appropriation - adjustments to 2021 long bill. (1) To implement this act, the general fund appropriation made in the annual general appropriation act for the 2021-22 state fiscal year to the controlled maintenance trust fund created in section 24-75-302.5 (2)(a), C.R.S., is decreased by $17,000.

(2) For the 2021-22 state fiscal year, $17,000 is appropriated to the department of revenue for use by the division of motor vehicles. This appropriation is from the general fund. To implement this act, the division may use this appropriation for operating expenses for driver services.

E.3.6 Long Bill Adjustment Including Change to Federal Funds

SECTION #. Appropriation - adjustments to the 2021 long bill. (1) To implement this act, appropriations made in the annual general appropriation act for the 2021-22 state fiscal year to the department of health care policy and financing are adjusted as follows:

(a) The general fund appropriation for medical services premiums, which is subject to the "(M)" notation as defined in the annual general appropriation act for the same fiscal year, is decreased by $9,084; and

(b) The cash funds appropriation for medical services premiums from the hospital provider fee cash fund created in section 25.5-4-402.3, C.R.S., is decreased by $409.

(2) The decrease of the appropriations in subsection (1) of this section is based on the assumption that the anticipated amount of federal funds received for the 2021-22 state fiscal year by the department of health care policy and financing for medical services premiums will decrease by $20,424.

E.4 Appropriation to Multiple Departments

E.4.1 Purpose(s) Specified

SECTION #. Appropriation. (1) For the 2021-22 state fiscal year, $653,000 is appropriated to the judicial department. This appropriation is from the general

fund. To implement this act, the department may use this appropriation as follows:

(a) $590,471 for trial court programs, which amount is based on an assumption that the department will require an additional 6.0 FTE; and

(b) $62,529 for courthouse capital and infrastructure maintenance.

(2) For the 2021-22 state fiscal year, $12,112 is appropriated to the department of regulatory agencies for use by the division of real estate. This appropriation is from the conservation easement holder certification fund created in section 12-61-720 (3), C.R.S. To implement this act, the division may use this appropriation for operating expenses.

E.4.2 Purchase Legal Services

SECTION #. Appropriation. (1) For the 2021-22 state fiscal year, $190,864 is appropriated to the department of regulatory agencies. This appropriation is from the division of securities cash fund created in section 11-51-707 (2), C.R.S. To implement this act, the department may use this appropriation as follows:

(a) $156,408 for use by the division of securities for personal services, which amount is based on an assumption that the division will require an additional 0.2 FTE;

(b) $7,200 for use by the division of securities for operating expenses; and

(c) $27,256 for the purchase of legal services.

(2) For the 2021-22 state fiscal year, $27,256 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of regulatory agencies under subsection (1)(c) of this section and is based on an assumption that the department of law will require an additional 0.2 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of regulatory agencies.

E.4.3 Purchase OIT services

SECTION #. Appropriation. (1) For the 2021-22 state fiscal year, $755,000 is appropriated to the department of agriculture. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) $734,000 for use by the conservation board for program costs, which amount is based on an assumption that the board will require an additional 5.0 FTE; and

(b) $21,000 for the purchase of information technology services.

(2) For the 2021-22 state fiscal year, $21,000 is appropriated to the office of the governor for use by the office of information technology. This appropriation is from reappropriated funds received from the department of agriculture under subsection (1)(b) of this section. To implement this act, the office may use this appropriation to provide information technology services for the department of agriculture.

E.4.4 Purchase ALJ Services

SECTION #. Appropriation. (1) For the 2021-22 state fiscal year, $190,864 is appropriated to the department of regulatory agencies. This appropriation is from the division of securities cash fund created in section 11-51-707 (2), C.R.S. To implement this act, the department may use this appropriation as follows:

(a) $168,438 for use by the division of securities for personal services, which amount is based on an assumption that the division will require an additional 4.0 FTE;

(b) $7,200 for use by the division of securities for operating expenses; and

(c) $15,226 for the purchase of administrative law judge services.

(2) For the 2021-22 state fiscal year, $15,226 is appropriated to the department of personnel for use by the office of administrative courts. This appropriation is from reappropriated funds received from the department of regulatory agencies under subsection (1)(c) of this section and is based on an assumption that the office will require an additional 0.1 FTE. To implement this act, the office may use this appropriation to provide administrative law judge services for the department of regulatory agencies.

E.4.5 Purchase Document Management Services

SECTION #. Appropriation. (1) For the 2021-22 state fiscal year, $48,777 is appropriated to the department of revenue. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) $47,677 for tax administration IT system (GenTax) support; and

(b) $1,200 for document management.

(2) For the 2021-22 state fiscal year, $1,200 is appropriated to the department of personnel. This appropriation is from reappropriated funds received from the department of revenue under subsection (1)(b) of this section. To implement this act, the department of personnel may use this appropriation to provide document management services for the department of revenue.

E.4.6 Purchase Criminal History Record Checks

SECTION #. Appropriation. (1) For the 2021-22 state fiscal year, $920,955 is appropriated to the department of revenue. This appropriation is from marijuana cash fund created in section 12-43.3-501 (1)(a), C.R.S. To implement this act, the department may use this appropriation as follows:

(a) $900,709 for marijuana enforcement, which amount is based on an assumption that the department will require an additional 9.8 FTE;

(b) $4,950 for vehicle lease payments; and

(c) $15,296 for the purchase of criminal history record checks.

(2) For the 2021-22 state fiscal year, $15,296 is appropriated to the department of public safety for use by the biometric identification and records unit. This appropriation is from reappropriated funds received from the department of revenue under subsection (1)(c) of this section. To implement this act, the unit may use this appropriation to provide criminal history record checks for the department of revenue.

E.5 Five-year Statutory Corrections Appropriation

E.5.1 Placeholder Provision

SECTION #. Potential appropriation. Pursuant to section 2-2-703, C.R.S., any bill that results in a net increase in periods of imprisonment in the state correctional facilities must include an appropriation of money that is sufficient to cover any increased capital construction, any operational costs, and increased parole costs that are the result of the bill for the department of corrections in each of the first five years following the effective date of the bill. Because this act may increase periods of imprisonment, this act may require a five-year appropriation.

E.5.2 5-year Appropriation Language - Capital Construction

17-18-129. Appropriation to comply with section 2-2-703 - HB 21-1212 - repeal. (1) Pursuant to section 2-2-703, the following statutory appropriations are made in order to implement House Bill 21-1212, enacted in 2021:

(a) For the 2021-22 state fiscal year, one hundred thousand dollars is appropriated from the capital construction fund created in section 24-75-302 to the corrections expansion reserve fund created in section 17-1-116.

(b) (I) For the 2022-23 state fiscal year, one hundred thousand dollars is appropriated from the capital construction fund created in section 24-75-302 to the corrections expansion reserve fund created in section 17-1-116.

(II) For the 2022-23 state fiscal year, fifty thousand dollars is appropriated to the department from the general fund.

(c) (I) For the 2023-24 state fiscal year, fifty thousand dollars is appropriated from the capital construction fund created in section 24-75-302 to the corrections expansion reserve fund created in section 17-1-116.

(II) For the 2023-24 state fiscal year, twenty-five thousand dollars is appropriated to the department from the general fund.

(d) (I) For the 2024-25 state fiscal year, twenty-five thousand dollars is appropriated from the capital construction fund created in section 24-75-302 to the corrections expansion reserve fund created in section 17-1-116.

(II) For the 2024-25 state fiscal year, eighteen thousand dollars is appropriated to the department from the general fund.

(e) (I) For the 2025-26 state fiscal year, eighteen thousand dollars is appropriated from the capital construction fund created in section 24-75-302 to the corrections expansion reserve fund created in section 17-1-116.

(II) For the 2025-26 state fiscal year, eleven thousand dollars is appropriated to the department from the general fund.

(2) This section is repealed, effective July 1, 2026.

SECTION #. In Colorado Revised Statutes, 24-75-302, **add** (2)(mm), (2)(nn), (2)(oo), (2)(pp), and (2)(qq) as follows:

24-75-302. Capital construction fund - capital assessment fees - calculation - information technology capital account - repeal. (2) The

controller shall transfer a sum as specified in this subsection (2) from the general fund to the capital construction fund as moneys become available in the general fund during the fiscal year beginning on July 1 of the fiscal year in which the transfer is made. Transfers between funds pursuant to this subsection (2) are not appropriations subject to the limitations of section 24-75-201.1. The amounts transferred pursuant to this subsection (2) are as follows:

(mm) For the 2021-22 fiscal year, one hundred twenty-five thousand one hundred sixty-five dollars pursuant to H.B. 21-1212, enacted in 2021;

(nn) For the 2022-23 fiscal year, one hundred twenty-five thousand one hundred sixty-five dollars pursuant to H.B. 21-1212, enacted in 2021;

(oo) For the 2023-24 fiscal year, one hundred twenty-five thousand one hundred sixty-five dollars pursuant to H.B. 21-1212, enacted in 2021;

(pp) For the 2024-25 fiscal year, one hundred twenty-five thousand one hundred sixty-five dollars pursuant to H.B. 21-1212, enacted in 2021;

(qq) For the 2025-26 fiscal year, one hundred twenty-five thousand one hundred sixty-five dollars pursuant to H.B. 21-1212, enacted in 2021;

E.5.3 5-year Appropriation Language - No Capital Construction

17-18-129. Appropriation to comply with section 2-2-703 - HB 21-1189 - repeal. (1) Pursuant to section 2-2-703, the following statutory appropriations are made in order to implement House Bill 21-1189, enacted in 2021:

(a) For the 2021-22 state fiscal year, four hundred eighty-five thousand dollars is appropriated to the department from the general fund;

(b) For the 2022-23 state fiscal year, five hundred sixty thousand four hundred dollars is appropriated to the department from the general fund;

(c) For the 2023-24 state fiscal year, six hundred seventy-one thousand fifty-one dollars is appropriated to the department from the general fund;

(d) For the 2024-25 state fiscal year, one million one hundred thousand dollars is appropriated to the department from the general fund; and

(e) For the 2025-26 state fiscal year, one million two hundred twenty-two thousand dollars is appropriated to the department from the general fund.

(2) This section is repealed, effective July 1, 2026.

E.5.4 Exception to Regular 5-year Appropriation Language

SECTION #. Exception to the requirements of section 2-2-703, C.R.S. The general assembly hereby finds that the amendments to section 18-5.5-102, C.R.S., enacted in section 2 of this act will result in the minor fiscal impact of one additional offender being convicted and sentenced to the department of corrections during the five years following the effective date of this act. Because of the relative insignificance of this degree of fiscal impact, these amendments are an exception to the five-year appropriation requirements specified in section 2-2-703, C.R.S.

E.6 Federal Funds

E.6.1 Only Federal Funds

SECTION #. Federal funds. For the 2021-22 state fiscal year, the general assembly anticipates that the department of education will receive $52,000 in federal funds to implement this act. This figure is subject to the "(I)" notation as defined in the annual general appropriation act for the same fiscal year.

E.6.2 Single State Fund and Federal Funds - Single Purpose - No (M) Notation

SECTION #. Appropriation. (1) For the 2021-22 state fiscal year, $19,679 is appropriated to the department of human services for use by the office of behavioral health. This appropriation is from the general fund and is based on an assumption that the department of human services will require an additional __ FTE. To implement this act, the department of human services may use this appropriation for __.

(2) For the 2021-22 state fiscal year, the general assembly anticipates that the department of human services will receive $271,111 in federal funds for __ to implement this act. The appropriation in subsection (1) of this section is based on the assumption that the department will receive this amount of federal funds, which is subject to the "(I)" notation as defined in the annual general appropriation act for the same fiscal year.

E.6.3 Multiple State Funds and Federal Funds - Single Purpose - (M) Notation

SECTION # Appropriation. (1) For the 2021-22 state fiscal year, $1,043,774 is appropriated to the department of health care policy and financing. This appropriation consists of $1,025,567 from the general fund, which is subject to the "(M)" notation as defined in the general appropriation act for the same fiscal year, and $18,207 from the healthcare affordability and sustainability fee cash fund created in section 25.5-4-402.4 (5), C.R.S. To implement this act, the department may use this appropriation for medical services premiums.

(2) For the 2021-22 state fiscal year, the general assembly anticipates that the department of human services will receive $1,167,747 in federal funds for medical services premiums to implement this act. The appropriation in subsection (1) of this section is based on the assumption that the department will receive this amount of federal funds.

E.6.4 State Fund and Federal Funds - HCPF - Multiple Purposes - (M) Notation

SECTION #. Appropriation. (1) For the 2021-22 state fiscal year, $31,008 is appropriated to the department of health care policy and financing for use by the executive director's office. This appropriation is from the general fund. To implement this act, the office may use this appropriation as follows:

(a) $27,382 for personal services, which amount is based on an assumption that the office will require an additional 0.9 FTE;

(b) $2,826 for operating expenses; and

(c) $800 for medicaid management information system maintenance and projects, which amount is subject to the "(M)" notation as defined in the annual general appropriation act for the same fiscal year.

(2) For the 2021-22 state fiscal year, the general assembly anticipates that the department of health care policy and financing will receive $37,408 in federal funds to implement this act. The appropriation in subsection (1) of this section is based on the assumption that the department will receive this amount of federal funds to be used as follows:

(a) $27,381 for personal services;

(b) $2,827 for operating expenses; and

(c) $7,200 for medicaid management information system maintenance and projects.

E.6.5 State Fund and Federal Funds - HCPF - Multiple Purposes - No (M) Notation

SECTION #. Appropriation. (1) For the 2021-22 state fiscal year, $138,787 is appropriated to the department of health care policy and financing for use by the executive director's office. This appropriation is from the intellectual and developmental disabilities services cash fund created in section 25.5-10-207 (1), C.R.S. To implement this act, the office may use this appropriation as follows:

(a) $58,134 for personal services, which amount is based on an assumption that the office will require an additional 1.8 FTE;

(b) $5,653 for operating expenses; and

(c) $75,000 for general professional services and special projects.

(2) For the 2021-22 state fiscal year, the general assembly anticipates that the department of health care policy and financing will receive $138,786 in federal funds to implement this act, which amount is subject to the "(I)" notation as defined in the annual general appropriation act for the same fiscal year. The appropriation in subsection (1) of this section is based on the assumption that the department will receive this amount of federal funds to be used as follows:

(a) $58,133 for personal services;

(b) $5,653 for operating expenses; and

(c) $75,000 for general professional services and special projects.

E.7 Additional Clauses

E.7.1 No Appropriation

SECTION #. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state money is necessary to carry out the purposes of this act.

E.7.2 Appropriation to Legislative Department

E.7.2.1 Single Agency

SECTION #. Appropriation. For the 2021-22 state fiscal year, $18,414 is appropriated to the legislative department for use by the legislative council staff. This appropriation is from the general fund and is based on an assumption that legislative council staff will require an additional 0.3 FTE. To implement this act, legislative council staff may use this appropriation to prepare fiscal impact statements.

E.7.2.2 Multiple Agencies

SECTION #. Appropriation. (1) For the 2021-22 state fiscal year, $9,587 is appropriated to the legislative department. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) $5,627 for use by the legislative council staff, which amount is based on an assumption that legislative council staff will require an additional 0.1 FTE; and

(b) $3,960 for use by general assembly.

E.7.2.3 Reduction to Legislative Appropriation Bill

SECTION #. Appropriation - adjustments to 2021 legislative appropriation bill. To implement this act, the general fund appropriation made in the annual legislative appropriation act (Senate Bill 21-999) for the 2021-22 state fiscal year to the legislative department for use by the legislative service agency is decreased by $52,000, and the related FTE is decreased by 0.5 FTE.

E.7.3 Capital Construction Appropriations

E.7.3.1 For Capital Construction

SECTION #. Capital construction appropriation. For the 2021-22 state fiscal year, $730,510 is appropriated to the department of human services for use by the regional centers for people with developmental disabilities. This appropriation is from the regional center depreciation account within the capital construction fund created in section 24-75-302 (3.7)(a), C.R.S. To implement this act, the regional centers may use this appropriation for capital construction related to the Kipling Village security perimeter fence.

E.7.3.2 For Controlled Maintenance

SECTION #. Capital construction appropriation. For the 2021-22 state fiscal year, $594,750 is appropriated to the department of human services for use by the regional centers for people with developmental disabilities. This appropriation is from the regional center depreciation account within the capital construction fund created in section 24-75-302 (3.7)(a), C.R.S. To implement this act, the regional centers for people with developmental disabilities may use this appropriation for controlled maintenance related to the installation of heat-detection fire alarm systems.

E.7.4 Current Year Appropriation with "Roll-forward" Authorization

SECTION #. Appropriation. For the 2021-22 state fiscal year, $1,000,000 is appropriated to the department of agriculture for use by the state conservation board. This appropriation is from the general fund. To implement this act, the board may use this appropriation for distributions to soil conservation districts. Any money appropriated in this section not expended prior to July 1, 2021, is further appropriated to the board for the 2021-22 state fiscal year for the same purpose.

E.7.5 Release of Overexpenditure

SECTION #. Appropriation to the department of health care policy and financing for the 2012-13 state fiscal year. (1) For the 2012-13 state fiscal year, $5,896,130 is appropriated to the department of health care policy and financing. This appropriation consists of $5,433,269 from the general fund and $462,861 from the Medicaid nursing facility cash fund created in section 25.5-6-203 (2)(a), C.R.S., and is for the payment of overexpenditures of line item appropriations contained in Part V of section 2 of chapter 305 (HB 12-1335), Session Laws of Colorado 2012, as amended by section 1 of chapter 422 (SB 13-089), Session Laws of Colorado 2013, and by section 10 of chapter 441 (SB 13-230), Session Laws of Colorado 2013, as follows:

(a) $5,290,984 from the general fund for medical service premiums;

(b) $462,861 from the Medicaid nursing facility cash fund for medical service premiums; and

(c) $142,285 from the general fund for Medicaid mental health fee for service payments.

(2) In accordance with section 24-75-109 (4)(a), C.R.S., all restrictions on funds for the 2013-14 state fiscal year for the amounts and items of appropriation listed in this section are released.

E.7.6 Appropriation from General Fund Exempt Account

SECTION #. Appropriation. For the 2021-22 state fiscal year, $26,132 is appropriated to the department of education. This appropriation is from the general fund exempt account created in section 24-77-103.6 (2), C.R.S. To implement this act, the department may use this appropriation for the state share of districts' total program funding.

E.7.7 Bill Funded from General Fund Savings in Other Bill

SECTION #. Appropriation - derived from savings. (1) For the 2021-22 state fiscal year, $48,000 is appropriated to the department of revenue for use by the taxpayer service division. This appropriation is from the general fund and is based on an assumption that the division will require an additional 0.8 FTE. To implement this act, the division may use this appropriation for personal services.

(2) The appropriation made in subsection (1) of this section derives from savings generated from the implementation of the provisions of Senate Bill 21-123, enacted in 2021.

SECTION #. Effective date. (1) Except as specified in subsection (2) of this section, this act takes effect September 1, 2021.

(2) This act takes effect only if:

(a) The net reduction in the appropriation from the general fund made in Senate Bill 21-123 is equal to or greater than the amount of the general fund appropriation made in subsection (1) of section [# of appropriation clause] of this act;

(b) Senate Bill 21-123 is enacted and becomes law; and

(c) The staff director of the joint budget committee files written notice with the revisor of statutes no later than July 1, 2021, that the requirement set forth in subsection (2)(a) of this section has been met.

E.7.8 Appropriation to CBI for Criminal History Record Checks

SECTION #. Appropriation. For the 2021-22 state fiscal year, $25,396 is appropriated to the department of public safety for use by the biometric identification and records unit. This appropriation is from the Colorado bureau of investigation identification unit fund created in section 24-33.5-426, C.R.S. To implement this act, the unit may use this appropriation for criminal history record checks.

E.7.9 Transfer of Appropriation from Long Bill

E.7.9.1 Specified Dollar Amount

SECTION #. Transfer of appropriation. (1) For the 2021-22 state fiscal year, $115,018 of the appropriation made in the annual general appropriation act for the state fiscal year from the general fund to the department of local affairs for use by the division of housing for affordable housing program costs is transferred to the department of human services for use by the office of self sufficiency. It is assumed that the office will require 2.4 of the FTE related to the department of local affair's appropriation. The office may use this appropriation to implement this act.

(2) For the 2021-22 state fiscal year, $18,108 of the appropriation made in the annual general appropriation act for the state fiscal year from the housing development grant fund created in section 24-32-721 (1), C.R.S., to the department of local affairs for use by the division of housing for affordable housing program costs is transferred to the department of human services for use by the office of self sufficiency. It is assumed that the office will require all of the FTE related to the department of local affair's appropriation. The office may use this appropriation to implement this act.

E.7.9.2 Unspecified Dollar Amount

SECTION # Transfer of appropriation. Any appropriation made in the annual general appropriation act for the 2021-22 state fiscal year to the department of public health and environment for the oil and gas consultation program is hereby transferred to the department of labor and employment to implement this act. It is assumed that the department of labor and employment will require all of the FTE related to the department of public health and environment's appropriation.

E.7.10 Contingent Appropriation

SECTION #. Appropriation. (1) For the 2021-22 state fiscal year, $15,000 is appropriated to the department of transportation. This appropriation is from the highway users tax fund created in section 43-4-201, C.R.S. The department may use this appropriation to implement this act.

(2) The money appropriated by this section becomes available upon the governor's entering into an agreement on behalf of the state pursuant to section 24-60-2402, C.R.S.

E.7.11 General Fund to Cash Fund

E.7.11.1 Without Associated Spending Authority

SECTION #. Appropriation. For the 2021-22 state fiscal year, $1,000,000 is appropriated to the lead school grant program fund created in section 22-36-107 (1), C.R.S. This appropriation is from the general fund. The department of education is responsible for the accounting related to this appropriation.

E.7.11.2 With Associated Spending Authority

SECTION #. Appropriation. (1) For the 2021-22 state fiscal year, $1,000,000 is appropriated to the lead school grant program fund created in section 22-36-107 (1), C.R.S. This appropriation is from the general fund. The department of education is responsible for the accounting related to this appropriation.

(2) For the 2021-22 state fiscal year, $1,000,000 is appropriated to the department of education. This appropriation is from reappropriated funds in the lead school grant program fund under subsection (1) of this section. To implement this act, the department may use the appropriation as follows:

(a) $200,000 for costs incurred in administering the program, which amount is based on an assumption that the department will require an additional 2.0 FTE;

(b) $600,000 for grants to school districts with enrollments of 250,000 or more; and

(c) $200,000 for grants to school districts with enrollments less than 250,000.

E.7.12 TANF Funds

SECTION #. Appropriation. For the 2021-22 state fiscal year, $561,050 is appropriated to the department of human services. This appropriation is from federal temporary assistance for needy families block grant funds. To implement this act, the department may use the appropriation for Colorado works program county block grants.

Appendix F: Materials Relating to Bill Drafting

F.1 Bill Titles - Single Subject and Original Purpose Requirements (Memo)

View "Bill Titles: Single Subject and Original Purpose Requirements" memo online

F.2 What Is Germane?

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To be germane, an amendment must be closely related to or bear on the subject of the motion to be amended.

Probably one of the most difficult decisions a presiding officer or parliamentarian must make is whether an amendment is germane. According to the fifth edition of *Black's Law Dictionary*, germane means "in close relationship, appropriate, relative or pertinent." The *Glossary of Legislative and Computer Terms*, published by the American Society of Legislative Clerks and Secretaries, defines germaneness as "the relevance or appropriateness of amendments or substitutes." But how does one decide what is germane?

Questions to Test Germaneness

- Does the amendment deal with a different topic or subject?
- Does the amendment unreasonably or unduly expand the subject of the bill?
- Would the amendment introduce an independent question?
- Is the amendment relevant, appropriate, and in a natural and logical sequence to the subject matter of the original proposal?
- Would the amendment change the purpose, scope or object of the original bill or motion?
- Would the amendment change one type of motion into another type?
- Would the amendment change a private (or local) bill into a general bill?
- Would the amendment require a change in the bill title?

Most states constitutionally limit bills to one subject.

Almost all states have constitutional provisions limiting bills to one subject, and over three-fourths of state legislatures have chamber rules that address germaneness. These rules vary greatly in detail, however. Many rules on germaneness are just a statement that "no motion or proposition on a subject different from that under consideration shall be admitted under color of amendment." Examples of other legislative rules (emphasis added to highlight their tests or requirements for germaneness) are:

1. An amendment to a bill introduced in the other house is not in order if the amendment requires a change of the bill title other than a clerical or technical change. (Alaska Joint)

2. No amendment proposed to a House bill substituting therein a different subject matter may be accepted unless accompanied by the written consent of its author and coauthors. (Indiana House)

3. Amendments to the bill shall be germane to the subject of the bill being amended, and the fact that an amendment is to a section of the same chapter of Kansas Statutes Annotated as an existing section in the bill shall not automatically render the amendment germane. (Kansas Senate)

4. Every amendment must be germane to the subject of the legislative instrument as introduced. (Louisiana Senate)

5. No bill shall be altered or amended on its passage through the House so as to change its original purpose as determined by its total content and not alone by its title. (Michigan House)

6. No amendment to any bill shall be allowed which shall change the scope and object of the bill. (Washington Senate)

A number of authorities on parliamentary rules and procedure have addressed germaneness.

Edward Hughes, who authored *Hughes' American Parliamentary Guide*, stated that when the germaneness rule was first adopted by the U.S. House of Representatives in 1789, it introduced a principle previously unknown in general parliamentary law. He also claimed that it was of high value in the procedure of the House. Hughes went on to say that former U.S. House Speaker John G. Carlisle set this test for germaneness:

> "After a bill has been reported to the House, no different subject can be introduced into it by amendment whether as a substitute or otherwise. When, therefore, it is objected that a proposed amendment is not in order because it is not germane, the meaning of the objection is merely that it [the proposed amendment] is a motion or proposition on a subject different from that under consideration."

The 1989 edition of *Mason's Manual* asks if the amendment is relevant, appropriate, and in a natural and logical sequence to the subject matter of the original proposal. To be germane, the amendment is required only to be related to the same subject. It may entirely change the effect of or be in conflict with the spirit of the original motion or measure and still be germane to the subject. An entirely new proposal may be substituted by amendment as long as it is germane to the main purpose of the original proposal.

According to *Robert's Rules of Order*, to be germane, an amendment must in some way involve the same question that is raised by the motion to which it is applied. An amendment cannot introduce an independent question, but it can be hostile to or even defeat the spirit of the original motion and still be germane.

According to Alice Sturgis' *Standard Code of Parliamentary Procedure*, an amendment that would change one type of motion into another type of motion is never in order. For example, if a member moves "that the pending question be referred to the membership committee," it would be out of order for someone to move "that the motion be amended by striking out the words 'referred to the membership committee' and inserting in their place the words 'postpone until the next meeting.'" This would change the motion from one referring a question to on postponing it, which has a different order of precedence. It is therefore out of order.

In *Elements of the Law and Practice of Legislative Assemblies in the United States of America*, Luther Cushin says that it is inappropriate (i.e., not germane) to turn a private (or local) bill into a general bill. If a bill relates to a single individual, it is not in order to add a provision for another individual, other individuals or a general provision.

There is no single test for germaneness.

There is no single, all-inclusive test for determining when a proposed amendment is germane and when it is not. The presiding officer or parliamentarian should (1) look to the state constitution, the chamber's own rules, other chamber precedents and the adopted parliamentary manual for requirement on germaneness; (2) develop a personal check list of test ideas; and (3) use good judgment to make a fair determination. Ultimately, the presiding officer must make the ruling.

Selected References

American Society of Legislative Clerks and Secretaries and National Conference of State Legislatures. *Mason's Manual of Legislative Procedure*. St. Paul, Minn.: West Publishing Company, 1989.

Cushing, Luther Stearns. *Elements of the Law and Practice of Legislative Assemblies in the United States of America*. Boston, Mass.: Little, Brown and Company, 1856.

Hughes, Edward Wakefiled. *Hughes' American Parliamentary Guide*. Columbus, Ohio: The F. J. Heer Printing Company, 1926.

Robert, Henry M. *Robert's Rules of Order Newly Revised*, Ninth Edition. New York, N.Y.: Scott, Foresman and Company, 1990.

Sturgis, Alice. *Standard Code of Parliamentary Procedure*, Third Edition. New York, N.Y.: McGraw-Hill Book Company, 1988.

F.3 Important Issues to Keep in Mind When Drafting

Once the OLLS receives a request for legislation, the assigned drafter usually begins work by focusing on how best to accomplish the purpose of the proposed legislation. However, a more important issue to be decided first is whether the proposed legislation is within the authority of the General Assembly. Although the General Assembly's constitutional power to enact legislation is plenary, this power is subject to constitutional limitations, statutory and regulatory limitations imposed by the federal government, and limitations imposed by the General Assembly itself by statute and by legislative rule. It is the responsibility of the drafter to determine whether there exists any state or federal constitutional provisions as well as any limitations imposed by statute, regulation, or legislative rule which could potentially affect the General Assembly's authority to enact proposed legislation. The goal of each drafter should be to identify potential issues so that sponsors can make informed decisions regarding their legislation.

One purpose of the following list is to set forth in one place for handy reference some of the more common issues which may be relevant to legislation. It is also the purpose of this list to assist drafters in more readily recognizing potential issues that could affect the legislation they are drafting. It should be noted that, while by no means does this list include all potential issues that could affect proposed legislation, it does provide a solid starting point for the drafter to begin thinking about any limitations that may exist on the authority of the General Assembly to enact legislation on a particular subject.

I. **ISSUES APPLICABLE TO ANY BILL REGARDLESS OF SUBJECT MATTER**

A. **Separation of Powers**

1. Are powers of one branch of state government being conferred upon another branch?

2. Are substantive powers of the legislative branch being improperly delegated? For example, is legislative authority being delegated to another entity (e.g., authorizing the Capital Development Committee or the Joint Budget Committee to approve acquisitions when the General Assembly is not in session, authorizing local governments to create a crime)?

3. If the proposed legislation creates a board or commission within the executive branch, would legislative appointments to the board or commission pursuant to statute violate the separation of powers doctrine? Will the board or commission exercise executive branch powers (e.g., rule-making, law enforcement) or only investigative, informative, and advisory functions?

B. **Equal Protection**

1. If the proposed legislation involves a classification that affects similarly situated groups in an unequal manner, one of the following standards of review may be applied in determining if such classification violates equal protection:

    a) ***Strict scrutiny standard:*** Applied when the law makes a classification involving a suspect class (e.g., race, religion, national origin) or a fundamental right or interest (e.g., voting rights, criminal process). To be upheld, the classification must be necessary to achieve a compelling state interest.

    b) ***Intermediate standard:*** Applied when the law makes a quasi-suspect classification based on gender or illegitimacy. To be upheld, the classification must be *substantially related* to achieving an important governmental interest.

    c) ***Rational relationship standard:*** Applied when the law makes a classification which does not involve a fundamental right, suspect class, or quasi-suspect class. To be upheld, the classification must be *reasonably related* to a legitimate governmental interest.

2. If the proposed legislation involves such a classification, should a legislative intent provision be included to explain the underlying interest justifying the classification?

C. **Ex Post Facto Laws - Retrospective Laws - Impairment of Contract**

1. Does the proposed legislation make an innocent act done before the passage of the law criminal? Aggravate a crime after committed? Impose a greater punishment for a crime after committed? Require less evidence for conviction of a crime after committed?

2. If the proposed legislation is a civil law that is retroactive in operation, are substantive rights being affected, making the law retrospective, or is the proposed change in the law only procedural in nature?

3. Could the proposed legislation impair any existing contract?

4. Could any potential problems be avoided by including a prospective-only applicability clause?

D. **State Constitutional Provisions Specifically Governing The Legislative Process:**

1. Is the law being changed other than by a bill?

2. Does the proposed bill have an enacting clause?

3. Does the proposed bill specify an effective date or will it take effect upon its passage?

4. Is the proposed bill a prohibited shell bill (title only)?

5. Does the proposed bill (other than the general appropriation bill) contain only a single subject which is expressed in its title?

6. Does the proposed bill revive, amend, or extend a law by referring only to its title?

7. Does the proposed bill constitute special legislation which is specifically prohibited? Could a general law be made applicable?

8. If the proposed bill involves state general fund dollars and has as its main purpose to raise revenue for general uses by state government, does the proposed bill originate in the House of Representatives?

9. Is the proposed legislation attempting to disburse public money by some means other than by appropriation?

10. Is public money being appropriated to private institutions?

E. **Measures referred to voters by the General Assembly**

1. Do you recall that:

   a) A constitutional amendment proposed by the General Assembly requires a 2/3rds vote of both houses but a referred law only requires a majority vote of both houses?

   b) The General Assembly can propose amendments to no more than 6 articles of constitution at the same general election?

   c) For elections held in November of odd-numbered years, the General Assembly can only refer measures that concern state matters arising under article X, section 20 of the state constitution (TABOR)?

F. **Federal Law**

1. If the legislation is proposed for purposes of complying with federal law, has the federal law been checked to determine what is actually required?

G. **Examples Of Other Constitutional Limitations Which May Be Relevant To Legislation:** Supremacy clause; regulation by Congress; elections for U.S. representatives and senators; limitations on state sovereignty; commerce clause; full faith and credit; privileges and immunities; free speech; establishment clause; right to bear arms; due process; unreasonable searches and seizures; and prohibition against cruel and unusual punishment.

II. ISSUES APPLICABLE TO BILLS CONCERNING SPECIFIC SUBJECT MATTERS

A. Article X, Section 20 (TABOR/1992 Amendment #1)

1. Does the proposed legislation require a referral clause in order to refer to the voters:

    a) A new tax, tax rate increase, valuation for assessment ratio increase for a property class, an extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain to any district?

    b) The creation of a multiple-fiscal-year direct or indirect debt or other financial obligation whatsoever without adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years?

    c) A weakening of a revenue, spending, or debt limit?

2. If a tax increase or debt increase is being referred to the voters, does the ballot question conform to the constitutionally required ballot language?

3. Did you know that, unless excluded from the limit on fiscal year spending (e.g., gifts, federal funds, collections for another government):

    a) State fiscal year spending (all revenues, whether expended or saved) may change annually by a maximum percentage equal to inflation plus the percentage change in state population in the prior calendar year, adjusted for voter-approved revenue changes?

    b) All local government fiscal year spending (all revenues, whether expended or saved) and property tax revenues may change annually by a maximum percentage equal to inflation plus annual local growth, adjusted for voter-approved revenue changes?

4. In order to qualify as an enterprise which is not subject to the provisions of TABOR, is the governmental entity or operation a government-owned business authorized to issue its own revenue bonds and receiving less

than 10% of annual revenue in grants from all Colorado state and local governments combined?

5. Did you know that:

    a) Emergency taxes may be imposed only upon a two-thirds majority of the members of both houses of the General Assembly or of a local government board declaring an emergency and imposing the tax by separate roll call votes?

    b) Emergency taxes will expire unless approved by the voters at the next election date 60 days or more after the emergency declaration?

    c) Emergency taxes can be spent only after emergency reserves have been exhausted?

    d) Emergency taxes not expended on an emergency must be refunded?

    e) Expenditures of emergency taxes do not constitute fiscal year spending and are not included in the calculation of the government's spending limit?

    f) Emergency property taxes are prohibited?

6. Did you know that:

    a) New or increased transfer tax rates on real property are prohibited?

    b) There cannot be a new state property tax?

    c) Property tax valuation notices must be mailed annually and may be appealed annually?

    d) The actual value of property must be stated on all property tax bills and valuation notices?

    e) Local governments are authorized to reduce or terminate their subsidy for programs delegated to local governments by the General Assembly for administration?

B. **State Finance**

1. Do you recall that:

a) All state money goes to the General Fund unless otherwise specified by law?

b) Interest on state money is credited to the General Fund unless otherwise expressly provided by law?

c) Fees and taxes collected by state agencies are transmitted to the State Treasury?

d) Future General Assemblies are not bound by legislation requiring appropriations?

e) Unexpended appropriations revert to the General Fund or, if made from a special fund, to the special fund?

f) The capital development committee must review reports from the executive director of the department of personnel and other agencies regarding the acquisition or disposition of state property and make recommendations prior to the acquisition or disposition?

g) Deficit spending by the State is prohibited?

h) Pledging the credit of the State to any person, company, or corporation is prohibited?

i) State aid to corporations is prohibited unless the "public purpose" exception applies?

C. **State General Fund Spending Limitation**

1. Total state general fund appropriations for a given fiscal year are limited to an amount equal to 5% of Colorado personal income. Does the proposed statutory change qualify as one of the existing exceptions or exclusions to the limit?

D. **Income Taxes**

1. Did you know that:

a) No local government can impose an income tax?

b) Any state income tax rate increase or new definition of taxable income can only take effect in the next taxable year?

c) All taxable net income is required to be taxed at one rate with no added tax or surcharge?

E. **Sales and Use Taxes**

1. If the rate of the state sales and use tax is being modified, has the rate been modified in all of the applicable statutory provisions?

2. If the sales and use tax rate is being increased:

    a) Does the bill contain a referral clause to refer the question of a tax rate increase to the voters?

    b) Should the statutory limit on the aggregate amount of sales and use taxes levied by the state, municipalities, and counties be increased by a corresponding amount?

3. If adding or changing an exemption to the state sales tax, was the same change made to the state use tax statutes?

F. **Old Age Pension Fund (OAPF)**

1. If the proposed bill involves state excise taxes on sales and use (not including motor fuels) or on alcoholic and malt beverages, are you aware that 85% of all revenues from these state excise taxes are earmarked for the OAPF? Is it possible to use a "hat trick" (earmarking an amount of general fund money equal to the amount of excise taxes generated from the law change) in order to avoid any conflict?

G. **Highway Users Tax Fund (HUTF)**

1. Does the proposed bill involve any of the following revenues which are constitutionally earmarked for the HUTF:

    a) License, registration fee, or other charge related to any motor vehicle upon any public highway?

    b) Excise tax on gasoline or other liquid motor fuel, other than aviation fuel?

2. Are HUTF revenues being used exclusively for the construction, maintenance, and supervision of the state-public highways? Are "off-the-top" distributions for costs of administration being made from HUTF revenues?

H. **State-Supervised Lottery Games**

1. If the proposed legislation is authorizing any new state-supervised lottery game operated under the authority of article XVIII, section 2 of the state

constitution, are the proceeds earmarked in accordance with article XXVII of the state constitution?

I. **Establishing/Transferring A Department/Agency Within the Executive Branch of State Government**

1. If the proposed legislation is creating a new state department within the executive branch, does an existing department need to be abolished in order to stay with the maximum number of 20 principal departments?

2. If creating a new state agency, what department is the agency created within?

3. In creating, abolishing, or transferring a state agency or department, have all of the necessary amendments been made to the Administrative Organization Act?

4. Has the type of entity been properly identified as a **type 1** or **type 2** entity with regard to the exercise of its statutory powers and the performance of its duties and functions pursuant to section 24-1-105, C.R.S.?

5. In creating a department, division, board, commission, or office, have the requirements of the Information Coordination Act been complied with in regard to:

    a) Preparation and distribution of annual reports?

    b) Issuance of publications circulated in quantity outside the executive branch?

J. **Authority for State Agencies to Promulgate Rules**

1. In granting rule-making authority to a state agency, has a proper delegation of authority been made by including sufficient statutory standards to protect against the unnecessary and uncontrolled exercise of discretionary power?

K. **State Personnel System**

1. If the proposed bill exempts any appointed state officials or state employees from the state personnel system, is the exemption constitutionally based?

2. Is the head of a principal department the appointing authority for employees of the department head's office and for the heads of the

department's divisions? Is the head of a department's division the appointing authority for division positions included within the personnel system?

3. Does the proposed legislation authorize personal services contracts creating an independent contractor relationship? Do all of the statutory conditions exist for this independent contractor relationship to be permissible?

4. Since the state personnel board and state personnel director and their duties are constitutionally based, are any proposed statutory changes regarding the board or the director consistent with the constitution?

L. **Licensing/Registration of Professions/Occupations**

1. If the proposed bill creates a disciplinary process for licensees/registrants, does the disciplinary process have adequate procedural safeguards for due process purposes? If the disciplinary process includes the Court of Appeals, do you need to amend the statutory subject matter jurisdiction for the Court of Appeals at section 13-4-102 (2), C.R.S.?

2. If the proposed bill requires licensing/registration to occur through a board or commission in the department of regulatory agencies, has the board or commission been authorized to adjust its fees to cover its direct and indirect costs? In which fund will the collected fees be deposited?

3. If the proposed bill requires fingerprint-based criminal background checks of employees, licensees, etc., have you included the canned language used elsewhere for such provisions, which canned language authorizes the Colorado Bureau of Investigation to conduct statewide criminal background checks and communicate with the Federal Bureau of Investigation to conduct federal criminal background checks?

4. If the proposed bill requires an agency to deny the issuance of a license/permit/certification to a person based on the person's conviction of a felony or a crime involving moral turpitude, does an applicable exception exist to the general rule set forth in section 24-5-101, C.R.S., that such a conviction cannot constitute grounds for denial? Or do you need to create such an exception?

M. **Sunrise/Sunset Law**

1. If regulation of any occupational or professional group not currently regulated is being proposed, has the sponsor been informed of the

requirement that a proposal for regulation must be submitted to the department of regulatory agencies for the review as set forth in section 24-34-104.1, C.R.S., before legislation may be introduced?

2. If the authority of a state agency or function subject to termination is being extended, is the authority being extended beyond 10 years of its original creation or beyond 15 years of its last sunset review? Have the schedules in § 24-34-104 and the statutory repeal provisions in the enabling legislation been modified to reflect the extension?

3. If the proposed legislation is creating a new advisory committee, does the draft include a review of the advisory committee by the General Assembly to occur no later than 10 years after the committee's creation as required by § 2-3-1203, C.R.S.?

N. **Social Services / Health Care Policy & Financing**

1. Do you know that:

   a) In *Hern v. Beye*, a U.S. Court of Appeals held that the Hyde Amendment affecting the federal medicaid law overrides the Colorado constitution against using public funds for abortion and that as a condition of participation in medicaid, the state must cover abortions that meet the federal exceptions: endangerment of the pregnant woman, rape, or incest?

   b) Compliance with the federal law requirements for child welfare services, including the child abuse central registry, as well as most social services-type programs, including public assistance and medicaid, is required for the State to receive federal funds for these programs, unless the State has been granted a waiver from federal requirements?

   c) If requiring an executive agency to perform a social services function, the federal single state agency requirement often applicable to social services programs administered with federal funds should not be violated?

   d) Rules regarding public assistance or welfare programs that relate to program scope and content or client and provider rights are to be adopted by the state board of human services while those that relate to department administration, accounting, and fiscal reporting are to be adopted by the executive director?

e) When creating any new medical assistance service or program in the Medical Assistance Act, federal laws need to be checked so that medical assistance services can be correctly categorized as mandatory or optional based on the federal categorization?

f) Public assistance (SNAP benefits, Colorado Works or temporary aid to needy families, old age pensions, aid to the needy disabled, aid to the blind, child welfare) is under the jurisdiction of the department of human services and medical assistance (medicaid, the medical programs for old age pensioners, the medically indigent program (CICP), the child health plan plus orCHP+) are under the jurisdiction of the department of health care policy and financing?

g) Colorado follows a state-supervised but county-administered system for the delivery of social services programs, public assistance, and medical assistance?

O. **Crimes**

1. Has a crime been sufficiently defined in order to satisfy due process and give persons notice of what conduct is prohibited, including any required elements of the offense and a required mental state?

2. In making specific conduct a crime, has the crime been properly classified in accordance with the statutory penalty classification system? Is there any need for the statute to specify the penalty?

3. Does the bill affect criminal penalties which will cause an increase in the period of imprisonment in state correctional facilities? If so, does the bill comply with the "pay-as-you- go" requirement by including a 5-year statutory appropriation? Does the 5-year statutory appropriation include a repeal of the statute?[Note that the 5-year statutory appropriation requirement was suspended until July 1, 2025. *See* section 2-2-703, C.R.S.]

P. **Education**

1. Do you recall that:

a) The State Board of Education and the Commissioner of Education are constitutionally created pursuant to article IV, section 1 of the state constitution?

b) The Colorado constitution grants the State Board of Education general supervision of the public schools of the state, which includes the power to promulgate rules as prescribed by law?

c) The Commissioner of Education and the Department of Education **do not** have the power to promulgate rules?

d) The State is required to provide a thorough and uniform system of free public schools as set forth in article IX, section 2 of the state constitution?

e) The State School Fund is constitutionally created pursuant to article IX, section 3 of the state constitution and the Fund's principal is inviolate while the interest earned on the Fund may only be expended for maintenance of the schools?

f) If public aid is requested by a private school, church, or for a sectarian purpose, that an analysis regarding character-based versus use-based is required to avoid violating the Free Exercise Clause of the U.S. Constitution?

g) The State Education Fund (also known as Amendment 23) is constitutionally created and the Fund's purpose and uses are outline in article IX, section 17 of the state constitution and in article 55 of title 22, C.R.S.?

h) The State Land Board and its duties and powers regarding the control and disposition of state public lands are constitutionally based pursuant to article IX, sections 9 and 10 of the state constitution?

i) The General Assembly may require persons ages 6 to 17 to attend public schools as described in section 22-33-104, C.R.S., unless educated by an alternative means?

j) School districts with boards of education are constitutionally required pursuant to article IX, section 15 of the state constitution?

k) A board of education has local control of instruction in its school district as set forth in article IX, section 15 of the state constitution?

l) Textbooks cannot be prescribed by the General Assembly or by the State Board of Education as set forth in article IX, section 16 of the state constitution?

m) The Board of Regents of the University of Colorado and the terms of office for which they serve are constitutionally based pursuant to article IX, section 12 of the state constitution?

n) The Board of Regents of the University of Colorado is constitutionally required to select the University's President as set forth in article IX, section 13 of the state constitution?

o) The City and County of Denver is constitutionally required to constitute one school district as set forth in article XX, section 7 of the state constitution ?

p) There are different types of public schools in the state including, but not limited to, schools of a school district, district charter schools, institute charter schools, boards of cooperative services, the Colorado school for the deaf and the blind, and approved facility schools?

Q. **Water**

1. Does the proposed bill affect water rights, which are property rights in Colorado, in a manner consistent with the technical prior-appropriation system governing water as established by article XVI, section 6 of the state constitution?

R. **Mandatory Health Care Coverage**

1. If the proposed legislation would require a new type of mandatory health coverage, has there been a discussion with the sponsor to determine if a report of the social and financial impacts of such coverage is statutorily required?

S. **Increasing Or Decreasing Compensation Of Public Officials**

1. Is the compensation of elected public officers being increased or decreased during their term of office?

2. Is the compensation of justices and judges being decreased during their term of office?

3. If the proposed legislation concerns compensation of county officers:

a) Has the General Assembly given consideration to county variations prior to the setting of compensation levels?

b) Is the compensation of all county officers within the same county being changed or is the compensation for the same county officer in all counties in the state?

c) Is a governmental entity other than the General Assembly being given the authority to set the salaries of county officers?

T. **Local Governments**

1. Does the proposed legislation affect home rule municipalities or counties?

    a) Does the bill involve an issue of statewide concern? Local concern? Mixed statewide and local concern?

    b) Should a legislative intent provision be included to explain why it is an issue of statewide concern?

2. If not home rule, does the proposed legislation give enough authority to non-home rule municipalities or counties to accomplish the legislation's intended purpose since they are limited to only those powers and duties established statutorily?

3. Are local governments being authorized to impose new or increase existing real property transfer taxes? A local income tax?

4. If the State is imposing a new mandate or an increase in the level of service of an existing mandate on local governments, has the State provided additional moneys to local governments for reimbursement of increased costs or are local governments statutorily authorized to treat such mandates and increases in the level of service as optional?

5. Are constitutionally created county officers being abolished?

U. **Property Taxation**

1. Does the proposed legislation provide for the imposition of a uniform mill levy by the political subdivision levying property tax?

2. Are the appropriate methods of appraisal being used to determine the actual value for different types of property?

3. Is the proposed legislation changing the percentage of actual value of real property used to determine valuation for assessment? Depending on the class of real property, is the change consistent with the constitution?

4. If exempting property from property taxation, is there a constitutional basis for the exemption? Are cumulative uniform exemptions and credits to reduce or end business personal property taxes being created?

5. Does the proposed legislation concern county boards of equalization, the state board of equalization, or the property tax administrator? If so, are the changes consistent with the constitutional provisions governing them and their duties?

6. Is the proposed bill imposing a state property tax?

Appendix G: Initiatives

G.1 Policy of the Committee on Legal Services Concerning Use of Staff to Draft Initiatives

Applicable statutory provisions. Section 2-3-504, Colorado Revised Statutes, requires the staff of the Office of Legislative Legal Services ("OLLS") to draft or aid in drafting of legislative bills and other documents as required in the legislative process. Article 40 of title 1, C.R.S., assigns duties to the OLLS in connection with the review and comment process for initiated measures, and to the Director of the OLLS in his capacity as a member of the Ballot Title Setting Board. The OLLS has no statutory authority to draft initiative measures for the proponents of initiatives.

Use of OLLS staff - policy. Members may request and the OLLS staff shall prepare referred bills and concurrent resolutions in the form appropriate for introduction in either house of the General Assembly. However, members should not ask OLLS staff to provide drafting assistance for an initiative measure, whether the member is a named proponent or is working with nonlegislators who are the named proponents, and whether the drafting assistance would be provided before, at, or after the review-and-comment meeting. When exercising the right to initiate legislation, a member is acting primarily in his or her capacity as a private citizen rather than as a member of the General Assembly.

This policy recognizes the attorney-client relationship that exists between the General Assembly as an institution and staff attorneys in the OLLS. Staff attorneys employed by the OLLS should provide bill-drafting services to members in a manner that is consistent with the preservation and protection of the legislative prerogative of exercising legislative power in an elected representative body.

OLLS staff members are encouraged to inform members of this policy.

Adopted December 14, 1998

G.2 Twelve Top Twelve Things to Avoid In Initiative Review-and-Comment Memos

1. Forgetting to note that there is no enacting clause.
2. Assuming that the proponents' numbering of constitutional or statutory sections is correct. Have they used a section number already used in an amendment

approved by the voters at the last general election but not in the statute books yet?

3. Failing to explain why the proponents' opportunity to select the numbering for their measure is important. Naturally, the memo will note if the proponents haven't designated where their measure is to be placed in the constitution or the statutes. But the memo should tell the proponents why they should use the chance to designate the placement. In *Zaner v. City of Brighton*, 917 P.2d 280 (Colo. 1996), the placement of Amendment No. 1's election provisions in Article X of the state constitution influenced the Supreme Court's decision that those provisions could be applied only to revenue issues.

4. Neglecting to deal with definitions. Illustrate why the measure may need definitions by using examples of different interpretations. Ask whether the measure assumes that existing definitions would apply. Should it repeat existing definitions or refer to them? Do the proponents want to create their own definitions?

5. Being legalistic. (You should consider your audience here. If you know the proponents are lawyers, you can probably get away with more legal terminology, but the memo should still be understandable to non-lawyers. One of the purposes of the review-and-comment process is to inform the public about what's pending.)

6. Trying to get everything into one looooooooong question. You may be able to shorten the actual question by stating your assumptions about the measure in separate sentences at the beginning of a paragraph, then asking your question.

7. Being too theoretical. Consider describing a concrete situation in one or more short sentences, then asking, "How would this measure affect this situation?" or "What if....?"

8. Asking questions about possibilities that are highly remote. If there's no chance your situation will occur in real life, reconsider your question.

9. Asking questions without laying a foundation. Example: "What does the term 'local government' mean?" Explain that there are several forms of local government in Colorado and why applying the measure to municipalities makes sense but applying it to school districts may not.

   Another example- Don't just ask, "What are the Equal Protection Implications of this provision?" State the applicable legal standard ("Courts will usually ask whether there is a rational basis for the way the class of persons has been

defined"), and ask for the policy basis behind the proponents' decision to distinguish between one group and another.

10. Being confrontational. In the example above, don't ask, "Doesn't this provision violate the Equal Protection Clause?"

11. Assuming proponents couldn't possibly mean what they've said. Our job is to help the proponents decide whether their language accomplishes their purpose, not to tell them what they ought to want. It's easy to fall into the trap of assuming that every proponent of a recurring issue takes the same position on key aspects of the issue.

12. Failing to focus questions appropriately. Will the question solicit the information you intended?

G.3 Sample Documents

- **Original Submission**
- **Review and Comment Memo**
- **Final Text Filed With Secretary of State After Review and Comment Meeting**
- **Staff Draft Prepared for the Title Board**

G.4 The Single-Subject Requirement For Initiatives

GOVERNMENT AND ADMINISTRATIVE LAW NEWS

The Single-Subject Requirement For Initiatives

by Rebecca C. Lennahan

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As the general election approaches, information about initiatives begins to flood voters. Radio, television, and newspapers carry stories about potential initiative measures. Petition circulators approach voters as they buy groceries and shop at malls. Citizens who are unhappy with the legislature's defeat of bills, or who do not want an issue compromised in the give-and-take of legislative debate, try to take their measures directly to the people through the initiative process. Successfully negotiating the hurdles of the single-subject requirement has become an important aspect of that process.

Colorado's constitution allows citizens to initiate both constitutional amendments and statutes. The legislature must refer constitutional amendments, and may refer statutes, to the voters. Measures placed on the ballot using the initiative or the referendum are not subject to the Governor's veto. On the ballot, citizen initiatives are designated by number, and measures referred by the legislature are designated by letter.

Citizen-proponents who wish to initiate a constitutional amendment or statute must submit a written draft to the legislature's professional research and drafting staffs for review and comment. When the text is final, proponents file it with the Secretary of State, who then convenes the Ballot Title Setting Board ("Board").[1] The Board's function is to draft and adopt a title for the measure, which will appear at the top of petitions and on the ballot if enough signatures are gathered. If anyone—proponents, opponents, or other interested citizens—objects to the Board's work, he or she may appeal directly to the Colorado Supreme Court ("Court"), so title questions can be resolved prior to the election. The recent single-subject cases discussed in this article have arisen out of these expedited proceedings.

This article provides background information about the single-subject requirement, discusses legislative practices and the Court's concern about voter surprise and fraud, and analyzes the Court's single-subject test and how it applies to omnibus measures. The article also discusses the importance of drafting measures carefully and provides tips for initiative proponents.

The Single-Subject Requirement

In 1994, Colorado voters adopted a constitutional amendment that prohibits the submission of any initiative measure that contains more than one subject.[2] The amendment also requires that the single subject be stated clearly in the measure's title. The single-subject requirement has

[1] Note 1 The Ballot Title Setting Board consists of the Secretary of State, Attorney General, and Director of the Office of Legislative Legal Services. CRS § 1-40-106.

[2] Note 2 Colo. Constitution, Article V, § 1(5.5).

applied to legislative bills since statehood,[3] and the amendment extended the requirement's application to constitutional amendments referred by the legislature.[4]

The amendment represented a reaction to the adoption of the Taxpayer's Bill of Rights ("TABOR"), which was approved in 1992.[5] Most voters probably understood TABOR to be a requirement that they approve new taxes or tax rate increases. However, as state and local governments began to implement TABOR, it became clear that TABOR covered many other matters, including revenue limits and refunds of excess revenues, annual elections on fiscal issues, votes on multi-year financial obligations in addition to debt, and local governments' opting out of state programs delegated to them for administration. The 1994 "Blue Book," the analysis of ballot issues prepared by the legislature's research staff, cited TABOR as a measure that might not have been on the ballot if a single-subject requirement had been in place.[6] Subsequently, the Court has stated expressly that TABOR would have violated the single-subject requirement.[7]

In submitting the single-subject constitutional amendment, the legislature wanted to protect voters from making changes inadvertently, particularly changes that were as sweeping as those made by TABOR. The legislature also was aware of court cases that struck down restrictions on initiative rights,[8] and it did not want the single-subject requirement to be construed as infringing on those rights. Therefore, in its 1994 session, the legislature enacted statutory rules for the application of the single-subject requirement in the event the amendment was adopted. This legislation incorporated the standards the courts and legislature had developed for applying the century-old single-subject requirement for legislative bills.[9]

CRS § 1-40-106.5 first recites the purposes of the single-subject requirement as set forth in the judicial decisions construing it. These purposes are to avoid the treatment of incongruous subjects in the same measure, or subjects having no necessary or proper connection, especially for the purpose of "logrolling" or securing the passage of measures that could not pass on their own merits, and to prevent surprise or fraud on the voters. The statute also provides that the

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[3] Note 3 Colo. Constitution, Article V, § 21.

[4] Note 4 Colo. Constitution, Article XIX, § 2(3).

[5] Note 5 Colo. Constitution, Article X, § 20.

[6] Note 6 Another measure that arguably was broader than TABOR--the Election Reform Amendment--was on the ballot in 1994, but was defeated. The presence of that measure also may have demonstrated the need for a single-subject requirement.

[7] Note 7 *In Re Amend Tabor 25*, 900 P.2d 126 (Colo. 1995). *See also In Re Proposed Initiative 1996-4*, 916 P.2d 533 (Colo. 1996), which dealt with an initiative to repeal most of TABOR and leave only the vote on taxes.

[8] Note 8 *See Meyer v. Grant*, 486 U.S. 414 (1988), and cases cited therein.

[9] Note 9 CRS § 1-40-106.5.

single-subject requirement is to be construed liberally to prevent these practices and still preserve and protect the right of initiative. Finally, the statute states the legislature's intent that the Board apply judicial decisions construing the single-subject requirement for bills and follow the legislature's rules in considering bill titles.

With this blueprint for future application, few expected that applying the single-subject requirement to initiatives would cause any significant change in the initiative process, since the legislature had lived with the requirement for over a century. However, the Court has developed new single-subject jurisprudence for initiative titles. This result is attributable to the fundamental differences between the initiative and the legislative processes, the Court's concerns about surprise and fraud on the voters, and measures that have pushed and sometimes exceeded the limits of the single-subject rule.

Legislative Practices

If the legislature's rules in considering bill titles are to be applied, all participants in the initiative process need to understand what those rules are. The legislature applies the single-subject rule for legislative bills quite literally. Virtually all bill titles begin with the word "concerning," followed by a statement of the single subject. This helps to ensure that the subject is stated as a thing, a noun. A "subject," as the word implies, should not be an explanation, an argument on behalf of the bill, or a description of what the bill is intended to accomplish. The legislature tries not to use "and" when it states the single subject in titles because "and" implies more than one thing.[10]

Sometimes, in addition to the single subject, the title includes language that describes the contents of the bill in detail, but even then, the single subject appears before the first comma in the title. Legislative practice dictates that this additional language, referred to as the "trailer," is not the single subject itself, but an elaboration on it. The constitutional penalty for inaccurate title drafting is stiff—any subject treated in the bill but not expressed in the title is void.[11]

A legislator may choose a broad or narrow title. A broad title might cover a general subject (for example,"Concerning Motor Vehicles"). A narrow title would be more restrictive (for example, "Concerning an Increase in the Fee for Motor Vehicle Registration"). The choice of a broad or narrow title limits what is in the bill as it is introduced and the amendments that are adopted in the course of the legislative process.

The Court has observed that generality in titles is commendable because it reduces the risk of enacted material being declared void.[12] However, legislators rarely choose to use a broad title

[10] Note 10 *See* Memorandum, Bill Titles: Single Subject and Original Purpose Requirements.

[11] Note 11 Colo. Constitution, Article V, § 21.

[12] Note 12 *Edwards v. Denver & R.G.R. Co.*, 13 Colo. 59, 21 P. 1011 (1889); *Roark v. People*, 79 Colo. 181, 244 P.2d 909 (1926); *Tinsley v. Crespin*, 137 Colo. 302, 324 P.2d 1033 (1958).

unless it is necessary to cover the subject matter of the bill. Legislators do not like to open the door for amendments unrelated to their original goal.

For a legislative bill to satisfy the single-subject requirement, its provisions cannot be disconnected or incongruous, every provision must be germane to the subject as stated in the title, and someone reading the title must be given reasonable notice of what the bill contains.[13] A broad title gives notice that several subdivisions of the subject might be treated. Thus, drafters analyze the provisions of a bill, find a common denominator, and state that common denominator as the single subject in the title.

Voter Surprise and Fraud

The Court's concern about voter surprise in initiatives is both understandable and well founded. TABOR was broad and affected many aspects of state and local government operations. The debate about TABOR before the 1992 election did not bring all of these aspects to the public's attention, and voters undoubtedly have been surprised by TABOR's breadth. The Court has been required to consider important issues of TABOR's effects almost every year since TABOR's adoption.

The possibility of surprise is more inherent in measures adopted via the initiative process than in measures enacted by the legislature. Initiative proponents have total control over the content of their proposal and the final say in its wording. Although the state constitution and the statutes mandate that proponents submit their drafts to legislative staff for review and comment, proponents are not required to incorporate staff suggestions.[14] Review and comment hearings are open to the public, but the public is not allowed to testify. Voters are presented with a "take-it-or-leave-it" proposition. They have little or no opportunity to influence drafting, reduce the scope of the measure, or urge amendments to resolve ambiguities.

In contrast, single-subject cases involving surprise or fraud rarely arise out of legislative bills. The legislative process occurs in the public eye, the media provide daily coverage, and information about bills and legislative schedules is available on the Internet. A bill sponsor may elect to introduce a bill that covers a broad subject; however, the bill will be considered by at least two committees of reference, by all 100 legislators during floor debate, and, if the bill involves spending money, by two appropriations committees. The 450-plus registered professional lobbyists, the volunteer lobbyists, and the citizens they represent can scrutinize the provisions of the bill. Most important, amendments will be offered at every stage to clarify wording, resolve policy issues, and eliminate provisions that cannot be agreed on. If the bill passes, it will be the product of a give-and-take process in which the possibility of surprise is greatly reduced.

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[13] Note 13 *In Re Breene*, 14 Colo. 401, 24 P. 3 (1890); *Catron v. Co. Commissioners*, 18 Colo. 553, 33 P. 513 (1893); *Roark*, *supra*, note 12.

[14] Note 14 Colo. Constitution, Article V, § 1(5); *see also* CRS § 1-40-105.

Purpose Analysis

The Court has held that the test of whether an initiative measure violates the single-subject requirement is whether: (1) the measure relates to more than one *subject*; and (2) the measure has at least two distinct and separate purposes that are not dependent on or connected with each other.[15] Although the state constitution and the implementing legislation do not mention the word "purpose," this second part has its roots in *People ex rel. Elder v. Sours*.[16] This 1903 case construed the constitutional prohibition against the legislature submitting amendments to more than six articles of the constitution at any one election.

The *Sours* case involved a constitutional amendment to consolidate the city and county governments of Denver with Arapahoe County. The Court quoted at length from a Wisconsin case, which held that the Wisconsin requirement that separate amendments to the state constitution be submitted separately applied only when the amendments had different objects or purposes.[17] Since the main object of the Wisconsin amendment was to change from annual to biennial legislative sessions, the change from one-year to two-year legislative terms was not a separate purpose.

Although *Sours* was not a single-subject case, the Court stated the rule that if a subject is germane to the general subject of a constitutional amendment, it need not be submitted separately. The Court concluded that the challenged provisions, which were constructive amendments or amendments by implication to other sections of the constitution, were germane and related to a single purpose. Accordingly, the Court held that the Denver-Arapahoe constitutional amendment did not violate the six-article limitation.

At first glance, the prohibition of more than one purpose appears to require the Court to engage in a subjective analysis of proponents' goals and intent, in addition to an objective analysis of what the measure covers. However, the Court has determined purpose by examining and analyzing the language of the initiative proposal, much as the inquiry into any statute's purpose begins with an analysis of the document itself.

Statements about the purpose of their measure that proponents make during the review and comment hearing or before the Board appear to carry little weight in determining whether a

[15] Note 15 *In Re Public Rights in Waters II*, 898 P.2d 1078-79 (1995). This standard has been reiterated in virtually every single-subject case.

[16] Note 16 31 Colo. 369, 74 P. 167 (1903). The Colorado Supreme Court pointed out that the single-subject requirement, as it existed at that time, applied only to bills and not to constitutional amendments.

[17] Note 17 *Id.* at 177-78.

measure has more than one purpose.[18] For instance, in *In Re Public Rights in Waters II*, the Court determined that a proposal to mandate the adoption of a "strong public trust doctrine" for water and to require additional elections in water conservation and water conservancy districts contained more than one subject. The Board had accepted the proponent's testimony that the two elements were tied together because accountability to the voters was necessary to ensure that the public trust doctrine was implemented. The Court dismissed this argument as unpersuasive, stating that the common characteristic of "water" was not sufficient.[19]

Another example can be found in the more recent decisions made in a series of tax cut measures. Some measures proposed cuts in several different taxes, including property taxes outside TABOR limits that were approved at elections using a particular form of ballot title. The proponent insisted that his purpose in cutting this particular property tax was not to reverse court decisions that had validated similar ballot titles, nullify prior votes, or provide incentives for local governments to stop using such titles, but simply to provide a cut in the amount of another tax. A prior decision indicated that the application of one tax credit to several different taxes did not violate the single-subject requirement.[20] However, the Court held that the measures had two separate purposes: (1) tax cuts and (2) imposing new criteria for voter-approved revenue and spending increases.[21]

These decisions should not be viewed as second-guessing a proponent's purpose, but as protecting against voter surprise and logrolling. The tax cut initiatives were complex. While the version considered in the initial tax cut case contained only two sentences, it contained 241 words. The first sentence was 157 words long and began with a 27-word introductory portion and a colon, followed by eight clauses separated by semicolons.[22] Voters might be attracted by the idea of tax cuts, but surprised that their prior votes to retain surplus revenues had been nullified as a result.

Moreover, both the water and tax cut measures would have made fundamental changes in the law. When a measure includes more than one such fundamental change, the Court often has found that the measure has more than one purpose. Proponents cannot comply with the

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[18] Note 18 This is to be contrasted with the issue of whether a title accurately reflects the proponents' intent. *See In Re Proposed Amendment Concerning Unsafe Workplace Environment*, 830 P.2d 1031 (Colo. 1992).

[19] Note 19 *Supra*, note 15.

[20] Note 20 *Amend TABOR No. 32*, 908 P.2d 125 (Colo. 1995).

[21] Note 21 *In Re Ballot Title 1997-98 #30*, 959 P.2d 822 (Colo. 1998). For similar holdings concerning subsequent measures, *see also In Re Ballot Title 1999-2000 #37*, 977 P.2d 845 (Colo. 1999); *Matter of Title for 1999-2000 No. 38*, 977 P.2d 849 (Colo. 1999); *In Re Title for 1999-2000 No. 40*, 977 P.2d 853 (Colo. 1999); *In Re Title for 1999-2000 No. 44*, 977 P.2d 856 (Colo. 1999).

[22] Note 22 The text of this measure is set forth in *In Re Ballot Title 1997-98 #30*, *supra*, note 21 at 823.

single-subject requirement by calling a fundamental change merely an "effect" instead of a separate "purpose."

Resolving questions about when a provision is related to the main purpose or when a provision has enough independent significance to constitute a separate purpose can be difficult, especially when the measure contains multiple provisions relating to a general subject.[23] It is not as easy as finding a common denominator among the provisions and designating that common denominator as the single subject. This dilemma leads to an analysis of the particular issues that "omnibus" measures present.

Omnibus Measures

The second part of the Court's single-subject test requires that the provisions of a measure have a necessary and proper connection *with each other*, which imposes a more stringent requirement than either the implementing legislation or legislative custom and practice. As discussed above, the Court test follows the *Sours* precedent and the Wisconsin decision set forth in *Sours*.[24] The implementing legislation simply requires a necessary and proper connection, without saying what the connection must be *with*, and legislative practices require a necessary and proper connection *with the single subject* as stated in the title.[25] This difference is attributable to a concern about protecting voters against provisions that might be "coiled up in the folds."[26]

In the Court test or in legislative practice, a "necessary" connection between provisions does not appear to mean that every provision is absolutely required (as in indispensable or compelled) to make the measure complete, or that the measure will not make sense or cannot be implemented without one of its provisions. Enacting a measure that makes a number of changes in a single

[23] Note 23 *E.g.*, *Matter of Adding Section 2 to Article VII (Petitions)*, 907 P.2d 586 (Colo. 1995) (measure making many miscellaneous changes in initiative and referendum process held to have single purpose of "reforming the initiative and referendum process"). *In Re Proposed Ballot Initiative on Parental Rights*, 913 P.2d 1127 (Colo. 1996) (granting parents right to control children's upbringing, education, values, and discipline was single purpose). *But see In Re Ballot Title 1997-98 #64*, 960 P.2d 1192 (Colo. 1998) (measure to make miscellaneous changes affecting judges held to have more than one purpose). See also discussion of judicial measures in text accompanying note 32, *infra*.

[24] Note 24 *Supra*, note 16.

[25] Note 25 *Supra*, note 13. The early single-subject cases state that a bill may cover many minor but associated matters, and the test for whether matters are associated appears to be if they are germane to the subject expressed in the title.

[26] Note 26 *In Re Breene*, supra, note 13 at 404.

area of the law is permissible.[27] The Court also has held that implementation details for a statutory measure are not in themselves separate subjects.[28]

However, proponents are limited in how far they can go in initiating an omnibus measure that includes miscellaneous changes in a broadly defined area. A limit also exists for legislative bills. In a 1987 case, the Court held that a bill containing multiple statutory amendments intended to reduce state general fund expenditures, increase revenues, and thereby balance the budget violated the single-subject requirement, even though every item in the bill related to the subject as stated in the bill's title.[29] The subject was too broad, the various features of the bill had no connection with each other, and the danger of forcing the acceptance of undesirable features to secure desirable features was too great.

Examples of the application of the necessary and proper correction requirement in the initiative context can be found in two decisions rendered soon after the single-subject requirement was adopted, as well as in recent decisions on proposals concerning the judiciary. *In Re Public Rights in Waters II* held that "water" was too broad to be a single subject.[30] *In Re Proposed Initiative 1996-4*, a measure to repeal most of TABOR, held that "limiting government spending" was too broad and general a concept to satisfy the single-subject requirement.[31]

Proponents of the measures concerning the judiciary have sought to impose term limits on judges, provide that judges need not be lawyers, require senate confirmation of judges, create a recall process for judges, disseminate information on each judge's case resolution time and criminal sentencing record, and mandate the suspension of any judge who is the subject of an adverse finding by the judicial discipline commission. All of these items relate to judges (or "judicial personnel" because the members of the Supreme Court are technically "justices," not "judges").

However, in several cases, the Court has held that: (1) any change in the powers and duties of the judicial discipline commission, whose members are not judicial personnel, is a separate subject; and (2) any effort to alter the authority of the city and county of Denver over county judges, or of a home rule city over its municipal judges, or to change the jurisdiction of Denver county court judges, is a separate subject.[32] The measures are simply too broad and comprehensive. As the

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[27] Note 27 *See* cases related to omnibus measures, *supra*, note 23.

[28] Note 28 *Matter of Title for 1999-2000 #200A, Steadman v. Hindman*, 29 Colo.Law. 172 (March 2000) (S.Ct. No. 99SA368, *annc'd* 1/24/00).

[29] Note 29 *In Re House Bill 1353*, 738 P.2d 371 (Colo. 1987).

[30] Note 30 *Supra*, note 15.

[31] Note 31 *In Re Proposed Initiative 1996-4*, supra, note 7.

[32] Note 32 *In Re Ballot Title 1997-98 #64*, 960 P.2d 1192 (Colo. 1998); *In Re Ballot Title 1997-98 #95*, 960 P.2d 1204 (Colo. 1998); *In Re Ballot Title 1999-2000 #29*, 972 P.2d 257 (Colo. 1999); *In Re Ballot Title*

Court noted, if a measure can cover the entire judicial branch, the purposes of the single-subject requirement have been violated.[33]

These decisions need not affect omnibus bills in the legislative process. First, omnibus bills rarely have the broad scope of the 1987 budget-balancing measure or the judicial personnel initiatives. Common examples are the annual bills containing miscellaneous amendments to criminal or election laws or a comprehensive revision of an area such as workers' compensation. Second, as outlined above, the legislative process provides ample opportunities for discussion and compromise on issues, with little possibility of post-enactment surprise.

These decisions do indicate that initiative proponents should be wary of measures that have an especially broad scope. Because TABOR provided the impetus for the single-subject requirement, measures that amend TABOR are likely to receive close scrutiny. Any measure that deals with an entire branch of government may face a difficult challenge. In addition, a measure that makes several fundamental changes in an area of law or in Colorado's system of government may be suspect. Proponents who advocate such comprehensive changes might consider an incremental approach using a series of measures, each containing a single subject.

On occasion, the Court has hinted that a constitutional amendment may be too broad if it requires changes in several portions of the state constitution.[34] However, proponents should not avoid proposing the amendment of more than one section or article if doing so will enhance clarity. The Sours case held that implied amendments of other articles do not create separate amendments as long as they relate to a single, definite purpose;[35] however, amendments by implication often create ambiguities.[36] Good drafting practice dictates that modification of existing law should be handled by express amendment and not left to inference. If a measure is clearly drafted, as discussed below, the Court will not elevate form over substance and can

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1999-2000 #33, 975 P.2d 175 (Colo. 1999); *In Re Ballot Title 1999-2000 #41*, 975 P.2d 180 (Colo. 1999); *In Re Ballot Title 1999-2000 #104*, 987 P.2d 249 (Colo. 1999).

[33] Note 33 *In Re Ballot Title 1997-98 #64*, *supra*, note 32 at 1200.

[34] Note 34 *Matter of Adding Section 2 to Article VII (Petitions)*, *supra*, note 23, held that the implied amendments to the recall process, currently treated in Article XXI of the Colo. Constitution, were a separate subject from changes in the initiative and referendum process, treated in Article V. Justice Scott, in a concurring opinion, has suggested that amendment of more than one constitutional section should trigger a presumption of more than one subject. *In Re Ballot Title 1999-2000 #29*, *supra*, note 32.

[35] Note 35 *Supra*, note 16 at 178.

[36] Note 36 *In Re Ballot Title 1999-2000 #104*, *supra*, note 32. The proponent of the judicial personnel measure, who was probably trying to eliminate what had been held to be a separate subject (alteration of Denver's authority over county courts and judges), removed the repeal of Denver's authority and was charged with amendment by implication and consequently with a violation of the single-subject requirement.

distinguish between conforming amendments made to other parts of the constitution and provisions that truly have separate purposes.

Importance of Drafting Initiated Measures Carefully

The Court has repeatedly stated that it will not engage in the interpretation of initiative measures as part of its review of their titles.[37] Interpretation before a measure has been adopted normally is not appropriate because the issue is not ripe for review and no facts have been presented.

However, one case in the series dealing with tax cut proposals exemplifies how strict adherence to this position became untenable in light of the single-subject requirement.[38] The measure in that case proposed to amend TABOR by cutting several state and local taxes and required state replacement of lost local revenues "within all tax and spending limits." These limits included the TABOR limit on the state's fiscal year spending. The Court found that the state could comply with the replacement requirement only if the state reduced spending on state programs, and that reduction of spending on state programs constituted a subject separate from the tax cuts. Justices Kourlis and Martinez, in dissent, noted that the majority's conclusion depended on an interpretation that, without the quoted language, state revenues used to replace local revenues would not have been subject to TABOR spending limits.[39]

In 1999, the Court acknowledged the need to engage in at least a limited interpretation of initiatives as it reviewed the title setting of yet another tax cut measure. The Board had set a title for the measure, despite statements by Board members that they were confused by the difficulty and complexity of its language and about whether the effects of the measure constituted multiple subjects. The Board believed it had a duty to resolve doubts in favor of proponents in the interests of protecting the right of citizen initiative. The Court reversed the Board's action and held that the Board's duty to protect against voter confusion means that the Board must not adopt a title if it cannot resolve questions about the measure's effects, even though the consequence is that proponents will not be able to circulate petitions.[40]

The Court resolved the conflict that sometimes arises between a citizen's right to initiate and the public's right to be protected from surprise, logrolling, and misleading titles in favor of the public's right. When the effects of a measure are so unclear that the Board cannot determine

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[37] Note 37 *See*, *e.g.*, *Spelts v. Klausing*, 649 P.2d 303 (Colo. 1982); *Matter of Title, Ballot Title*, . . . , 875 P.2d 207 (Colo. 1994); *Matter of Proposed Initiative 1997-98 #10*, 943 P.2d 897 (Colo. 1997).

[38] Note 38 *In Re Ballot Title for 1997-98 #84*, 961 P.2d 456 (Colo. 1998).

[39] Note 39 The dissenting justices believed that clarifying the applicability of existing limits did not constitute a separate subject.

[40] Note 40 *In Re Title for 1999-2000 #25*, 974 P.2d 458 (Colo. 1999).

whether the measure includes more than one subject, or cannot clearly express a single subject in the ballot title, no title may be set.[41] Consequently, the Board also may engage in a limited degree of interpretation, if necessary to resolve single-subject questions.

This spotlights the importance of drafting a measure clearly so the Board, or later the Court, is not faced with a measure whose interpretation is so difficult that its compliance with the single-subject requirement cannot be determined. Legal counsel who have drafting experience can be of assistance. In addition, proponents should seriously consider amending their measure in response to the questions legislative staff ask during the review and comment process. If a measure's purpose and effect cannot be divined from the measure itself, the Board or the Court may later find that voters are likely to be surprised or misled by the measure.

Tips for Initiative Proponents

Proponents who want to avoid successful challenges on single-subject grounds[42] should ask themselves, "What is the single subject of my measure? The Board almost always follows the format for legislative titles, so can I articulate the single subject in the format, 'Concerning X, and, in connection therewith, providing . . . ,' where X is the single subject and the language after 'in connection therewith' describes specific features of the measure?" This format should satisfy the single-subject requirement, inform voters, and avoid surprise.

Proponents also should consider whether and how each element of the measure is necessarily and properly related to a single purpose. If the relationship to a single purpose is clear, the measure should satisfy the requirement that the elements be connected with each other. These relationships should be clear from the text of the measure, and "not rest upon a merely possible or doubtful inference, . . . [and] be within the comprehension of the ordinary intellect, as well as the trained legal mind."[43] Finally, proponents should ask themselves whether their articulated subject and purpose are too broad—that is, whether they cover a number of elements that voters might want to vote on separately.

Conclusion

Five years of Colorado Supreme Court interpretations of the single-subject requirement for initiatives are now available to proponents.[44] The Court has emphasized its duty to protect voters against surprise and fraud. It has developed a two-part test, which involves the traditional

[41] Note 41 *Id*; *see also In Re Ballot Title 1997-98 #30*, supra, note 21 at n. 2 (Justice Hobbs' description of the appropriate degree of substantive inquiry).

[42] Note 42 Expecting to avoid challenges altogether probably is unrealistic. Opponents will take the opportunity to try to delay the circulation of petitions for any controversial measure.

[43] Note 43 *In Re Breene*, *supra*, note 13 at 406.

[44] Note 44 *See* cases annotated in Colorado Revised Statutes, Colo. Constitution, Article V, § 1.

analysis of whether the measure relates to more than one subject, as well as whether its provisions are dependent on and connected to each other and to one general purpose. In addition, the Court has stated that a measure simply may be too broad, even if a common thread exists among its provisions. Finally, it has placed the burden squarely on proponents to bring forth a measure whose provisions are clear enough that the Board and the Court can determine and express the single subject.

Because of the Court's concerns about voter surprise and logrolling, initiative proponents may not have the same degree of choice about the scope of their measures as the sponsors of legislative bills. However, if proponents carefully analyze and draft their measures, the single-subject requirement will not present an obstacle.[45]

G.5 Judicial Interpretations of the Law Governing Submission of Ballot Initiatives in Colorado

Quotations and annotations from Colorado Supreme Court and federal court cases applying Colorado constitutional and statutory provisions on preparation and filing of initiatives, proceedings of the title-setting board, and related matters. (Last updated August 3, 2007.)

Outline

I. BALLOT TITLE AND SUBMISSION CLAUSE

A. Substance

1. General -- Standards To Be Met In Fixing Title, Etc.

2. "True Meaning and Intent"

3. Catch Phrases

B. Procedure

1. General

2. Time Limits

3. Rehearings

4. Appeals

[45] Note 45 The constitutionality of the single-subject requirement recently was upheld against First Amendment and Equal Protection challenges in *Campbell v. Buckley*, 98-1329 (10th Cir., 2/10/00), *aff'g*, 11 F.Supp.2d 1260 (D.Colo. 1998).

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I. TITLE, SUBMISSION CLAUSE, AND SUMMARY

A. Substance

1. General -- Standards To Be Met In Fixing Title, Etc.

Title board's duties: The title-setting board must: (1) Designate and fix proper fair title for each proposed law or constitutional amendment, together with submission clause; (2) Prepare a clear, concise summary of the proposed law or constitutional amendment, which is true, impartial and not an argument, nor likely to create prejudice, either for or against measure; (3) Consider public confusion possibly caused by misleading titles and, if practicable, avoid titles for which the effect of a "yes" or "no" vote will be unclear; (4) Not permit treatment of incongruous subjects in same measure; and (5) Prevent surreptitious measures and advise people of each measure's subject by title. *In re Title, etc., for 1999-2000 ##25-27*, 974 P.2d 458, 465 (Colo. 1999).

Internal draft documents not considered. Where the Board's staff working draft of a suggested title and summary was captioned with the serial number of the initiative and a short, descriptive footnote inserted for tracking purposes, any allegedly misleading terms in the footnote were irrelevant. Only the official titles and summary would be seen by the voters, therefore, review would be limited to the official titles and summary. *In re Title, etc., for 1999-2000 #215*, 3 P.2d 447 (Colo. 2000).

"Well-established principles" of review: "(1) [W]e must not in any way concern ourselves with the merit of the proposed amendment since, under our system of government, that resolution rests with the electorate; (2) all legitimate presumptions must be indulged in favor of the propriety of the board's action; and (3) only in a clear case should a title prepared by the board be held invalid." *Bauch v. Anderson*, 178 Colo. 308, 310, 497 P.2d 698, 699 (1972).

Purpose of title, submission clause, and summary is to "fairly and succinctly advise the voters what is being submitted, so that in the haste of an election the voter will not be misled into voting for or against a proposition by reason of the words employed." *Dye v. Baker*, 143 Colo. 458, 460, 354 P.2d 498, 500 (1960). In addition, language should "enable the electorate, whether familiar or unfamiliar with the subject matter . . . to determine intelligently whether to support or oppose [the] proposal." *In re Proposed Initiative Concerning "State Personnel System"*, 691 P.2d 1121, 1123 (Colo. 1984).

When writing titles, the connection between title and initiative must be so obvious as that ingenious reasoning, aided by superior rhetoric, will not be necessary to understand it. The connection should be within the comprehension of voters of average intelligence. *In re Title, etc., for 1999-2000 ##25-27*, 974 P.2d 458, 469 (Colo. 1999).

Brevity. Submission clause must be brief. *Cook v. Baker*, 121 Colo. 187, 214 P.2d 787 (1950). But see *In re Proposed Election Reform Amendment*, 852 P.2d 28, 32 (Colo. 1993) ("[I]f a choice must be made between brevity and a fair description of essential features of the proposal, the decision must be made in favor of full disclosure . . . . In the case of a complex measure embracing many different topics . . . , the titles and summary cannot be abbreviated by omitting references to the measure's salient features.").

Avoidance of catch phrases. "Catch phrases or words which could form the basis of a slogan for use by those who expect to carry on a campaign for or against an [initiative] should be carefully avoided . . . ." *Say v. Baker*, 137 Colo. 155, 322 P.2d 317 (1958) (Board acted properly in refusing to include phrase "freedom to work" in title of initiative prohibiting employers from using a person's membership or lack of membership in a labor union as the basis for hiring or firing). *But see In re Workers Comp Initiative*, 850 P.2d 144, 147 (Colo. 1993) (distinguishing *Say*, upholding inclusion of words "Workers Choice of Care Amendment" in summary where phrase appeared in measure itself and was not shown to be "a well-known, arguably inflammatory phrase comparable to 'Freedom to Work', ...")

The existence of a slogan or "catch phrase" is determined in the context of contemporary political debate. *In re Proposed Initiative 1996-6*, 917 P.2d 1277, 1281 (Colo. 1996), citing *In re Workers comp Initiative*, 850 P.2d 144, 147 (Colo. 1993).

Discretion to reconcile competing requirements. "[T]he Board is given considerable discretion in resolving the interrelated problems of length, complexity, and clarity in designating a title and

ballot title and submission clause." *In re Proposed Tobacco Tax*, 830 P.2d 984, 989 (Colo. 1992) (citing *In re Initiative Concerning "State Personnel System"*, 691 P.2d 1121, 1125 (Colo. 1984)).

"[S]o long as the title, the ballot title and submission clause, and the summary accurately reflect the central features of the initiated measure in a clear and concise manner, we will not interfere with the Board's choice of language." *In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in Manitou Springs, Fairplay and in Airports*, 826 P.2d 1241, 1245 (Colo. 1992).

"The proponents are essentially claiming that the title should have been drafted more narrowly. We will not, however, reverse the Board's action merely because a better title could have been drafted." *In re Proposed Initiated Constitutional Amendment Concerning Suits Against Nongovernmental Employers Who Knowingly And Recklessly Maintain An Unsafe Work Environment*, 898 P.2d 1071, 1074 (Colo. 1995).

Interplay of clarity and single-subject requirements. Before a clear title can be written, the Board must reach a definitive conclusion as to whether initiatives encompass multiple subjects. Absent such resolution, it is axiomatic that the title cannot clearly express a single subject. *In re Title, etc., for 1999-2000 ##25-27*, 974 P.2d 458, 468-469 (Colo. 1999).

What are "central features": Inclusion of certain features in title held to be mandatory where each such feature was found to be "a matter of significance to all concerned with the issues dealt with in the proposed amendment." *In re Proposed Election Reform Amendment*, 852 P.2d 28 (Colo. 1993).

Documents prepared by the board need not identify the prospective article number and section number of a proposed amendment; a statement of the "principle" of the amendment is all that is required. *In re Proposed Initiative on Surface Mining*, 797 P.2d 1275, 1281 (Colo. 1990).

2. "True Meaning and Intent"

Fidelity to text of measure. Title may include language not derived from the four corners of the initiative if it requires no interpretation of the proposal and does no more than express the proponents' clear and unequivocal intent. *In re Proposed Constitutional Amendment Under the Designation "Pregnancy"*, 757 P.2d 132, 135, 136 (1988) (upholding title containing reference to repeal of an existing, inconsistent constitutional provision, where proponents expressed their intent to "repeal" and "replace" the existing provision in a preface to the initiative itself).

"Neither this court nor the Board may go beyond ascertaining the intent of the initiative so as to interpret the meaning of the proposed language or suggest how it will be applied if adopted." *In re Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 241 (Colo. 1990) (citing *In re Casino Gaming*, 649 P.2d 303, 310 (Colo. 1982)). *Accord*, *In re Proposed Constitutional Amendment Under the Designation "Pregnancy"*, 757 P.2d 132 (1988).

Vagueness or ambiguity of initiated measure: The Board is under no duty to define vague terms, even if the proponents intend the language to remain vague so that the courts could interpret its application. *In re Proposed Initiative #1996-6*, 917 P.2d 1277, 1282 (Colo. 1996).

If terms of proposal are vague and undefined, title which tracks language of proposal accurately reflects the "intent and central features" of the proposal although it may be similarly vague and undefined. *See In re Proposed Initiated Constitutional Amendment Concerning Unsafe Workplace Environment*, 830 P.2d 1031 (Colo. 1992). *Accord*, *In re Casino Gaming Initiative*, 649 P.2d 303, 307 (Colo. 1982) (reference in title to "Southern Colorado Economic Development District" was not misleading where, although the number of counties included in the district had recently been reduced, text of initiative listed the counties encompassed by that term as used in the initiative); *In re Proposed Initiative on Transfer of Real Estate*, 611 P.2d 981 (Colo. 1980) (lack of distinction between sales "subject to" existing financing and "assumptions" of existing financing was not a basis for invalidating board's documents where language was taken directly from proposal); *Matter of Proposed Constitutional Amendment Concerning Limited Gaming in the City of Antonito*, 873 P.2d 733, 741 (Colo. 1994) (use of undefined term "adjusted net proceeds" reflected true intent and meaning of measure).

But a title which merely tracks language used in a proposal may still be misleading, where the general understanding of the effect of a "yes" or "no" vote will nevertheless be unclear and the parties have agreed, at the title-setting hearing, to the addition of language stating the undisputed intent and purpose of the measure in terms more likely to be understood by voters. *Matter of Proposed Initiative on "Obscenity"*, 877 P.2d 848 (Colo. 1994); see also *In re Proposed Initiative on "Governmental Business"*, 875 P.2d 871, 875-77 (Colo. 1994); *In re Title, etc., for 1999-2000 #104*, 987 P.2d 249 (Colo. 1999).

Where the Board was unable to ascertain initiatives' meaning well enough to address whether they might result in reducing state spending, the Board's was rendered incapable of setting clear titles that would not mislead the electorate. "Where the Board has acknowledged that it cannot comprehend the initiatives well enough to state their single subject in the titles, ... the initiatives cannot be forwarded to the voters and must, instead, be returned to the proponent." *In re Title, etc., for 1999-2000 ##25-27*, 974 P.2d 458, 467, 469 (Colo. 1999).

If the initiative cannot be comprehended well enough to state its single subject in the title, it cannot be forwarded to the voters and must be returned to the proponent. *In re Title, etc., for 1999-2000 #44*, 977 P.2d 856 (Colo. 1999).

Where text of proposal contains, but does not define, a term asserted to represent a "new and potentially controversial legal standard", it is sufficient that the title merely uses the term without attempting to interpret or define it. *Matter of Proposed Initiative on Water Rights*, 877 P.2d 321, 326-27 (Colo. 1994) (upholding title containing phrase "public trust doctrine" where

proposal required the state to adopt a "strong public trust doctrine", but the only available explanation of the term came from proponents' own testimony).

Even if a term in summary is unclear and undefined and must await future legislative and judicial construction and interpretation, use of the term in the summary will not amount to an abuse of discretion by the Board. *In re Title, etc., for 1997-1998 #75*, 960 P.2d 672, 673 (Colo. 1998).

Use of a technical and not generally understood term such as "open mining" in a ballot title is not misleading where the term is defined by statute and where any ambiguity in meaning is clarified by its use in the summary. *In re Title, etc., for 1999-2000 #215*, 3 P.2d 11 (Colo. 2000).

Discretion of Board. The Board was within its discretion when it set out the labeling requirements for genetically engineered food and drink in the summary but not the titles. The failure to define the foods that must be labeled in the titles does not render the titles misleading to voters. *In re 1999-2000 #265*, 3 P.3d 1210 (Colo. 2000).

"Unless the summary adopted by the board is clearly misleading or does not fairly reflect the purport of the proposed amendment, we will not interfere with the Board's choice of language." *In re Title Pertaining to the Proposed Initiative Under the Designation "Tax Reform"*, 797 P.2d 1283, 1288 (Colo. 1990).

Mere ambiguity of summary, if not clearly misleading, is not a ground for disapproval. *In re Proposed Initiative Concerning "State Personnel System"*, 691 P.2d 1121 (Colo. 1984).

Omission of the sentence describing the Initiative's legislative declaration does not render the summary clearly misleading to the electorate. *In re 1999-2000 #265*, 3 P.3d 1210 (Colo. 2000).

Predictions of future condition or effect. Terms used in title, etc., connote "an actual condition rather than some possible future state of affairs". *In re Amendment Concerning Limited Gaming in the Town of Idaho Springs*, 830 P.2d 963 (Colo. App. 1992) (use of term "statewide" was misleading where measure altered regulation of casino gambling as it foreseeably could be, but as yet had not been, conducted outside of limited area of four communities in state). But see *In re Title, etc., for 1999-2000 #215*, 3 P.2d 447 (Colo. 2000) (where initiative would apply to one known, existing mining operation in the state but there might be others in the future to which it would also apply, the title was not misleading for failure to state that the initiative would apply to only one mining operation in the state).

"We can only consider whether the Title, etc., reflect the intent of the initiative, not whether they reflect all possible problems that may arise in the future in applying the proposed language." Similarly, the asserted unconstitutionality of the initiative cannot be considered in title proceedings. *In re Title Pertaining to Confidentiality of Adoption Records*, 832 P.2d 229 (Colo. 1992) (upholding title, submission clause, and summary which did not indicate, contrary to

language of proposed amendment, that amendment to adoption-records statute would not be applied retroactively).

See also In re Proposed Initiative on Surface Mining, 797 P.2d 1275 (Colo. 1990) (federal preemption of ban on surface mining, as it pertained to mining activities on federal land, was beyond scope of matters to be considered by board); *In re Branch Banking Initiative*, 612 P.2d 96 (Colo. 1980) (potential for conflicting interpretations, at state and federal levels, of "public need and convenience" standard relating to banks was a matter properly left open to public debate rather than addressed in summary); *In re Proposed Initiative on Transfer of Real Estate*, 611 P.2d 981 (Colo. 1980) (potential for retroactive application of measure was not relevant to determination of accuracy of board's language).

Alleged effect of proposal on existing constitutional rights is beyond the scope of matters to be considered by the board. *In the Matter of Proposed Initiated Constitutional Amendment Concerning "Fair Treatment II"*, 877 P.2d 329, 331-32 (Colo. 1994). *Accord*, *Matter of Proposed Initiative on Water Rights*, 877 P.2d 321, 328 (Colo. 1994) (upholding title which did not venture to determine proposal's effect on private property rights). But see *In re Proposed Initiative on "Fair Fishing"*, 877 P.2d 1355, 1361-62 (Colo. 1994) (upholding summary that alerted voters to potential fiscal impact in the event that courts found compensation due to landowners affected by the measure).

Potential conflicts with existing law. Summary does not have to inform voters that the initiative may be in conflict with existing state laws: "Although the language of the summary could have been more precise, the chosen language fairly summarizes the intent and meaning of the proposed amendment." *In re Proposed Ballot Initiative On Parental Rights*, 913 P.2d 1127, 1131 (Colo. 1996)

"Neither the board nor this court is authorized to interpret the meaning of a proposed amendment prior to its adoption." *In re Proposed Initiative Concerning "State Personnel System"*, 691 P.2d 1121, 1125 (Colo. 1984). *Accord*, *In re Proposed Initiative Concerning "Automobile Insurance Coverage"*, 877 P.2d 853, 856 (Colo. 1994) (characterization of money raised under future implementing legislation as a "tax", "fee", or "premium" was a matter to be determined later by the courts, not by the board in title-setting hearings); *In re Mineral Production Tax Initiative*, 644 P.2d 20, 23 (Colo. 1982) (board acted properly in refusing to include, in summary, a detailed interpretation of the applicability of a mineral tax to a particular mineral where the measure itself was unclear on the subject).

"Effects of a measure which might be implied but would not occur cannot be required to be included in the descriptions which are statutorily required to be brief. . . . Petitioner's assertions that the titles must more fully distinguish the effects of certain provisions of the amendment is unrealistic where . . . the initiative is a complicated measure with numerous inclusions and exclusions. The summary, as statutorily required, more clearly reflects these differences."

Excessive elaboration would conflict with the requirement that the effect of a "yes" or "no" vote be clearly expressed. *In re Initiative Concerning "Taxation III"*, 832 P.2d 937 (Colo. 1992).

Title and summary need not cover all possible problems that may in the future arise when applying the amendment. *In re Sale of Table Wine in Grocery Stores Initiative*, 646 P.2d 916 (Colo. 1982).

Board's task, and Supreme Court's task on review, is to ensure that neither signers of the initiative nor electors voting on it will be misled by reading the summary. *In re Proposed Constitutional Amendment Under the Designation of "Pregnancy"*, 757 P.2d 132, 134 (Colo. 1988).

It is not the Supreme Court's function to replace a summary or title to achieve the best possible statement of the amendment. *In re Mineral Production Tax Initiative*, 644 P.2d 20 (Colo. 1982). Documents produced by the board "need not be so flawless as to constitute 'models for future draftsmanship.'" *In re Proposed Initiative on Surface Mining*, 797 P.2d 1275, 1279 (Colo. 1990).

Where meaning attributed to initiative in titles is "reasonable, although not free from all doubt, and relates to a feature of the proposed law that is both peripheral to its central purpose and of limited temporal relevance," Board's language will not be invalidated. *In re Proposed Initiative Concerning Drinking Age*, 691 P.2d 1127, 1131 (Colo. 1984) (upholding title implying that "selling, serving, or giving" of certain beverages to persons between 18 and 21 years of age would be permissible for a specified period of time although text of amendment said only that such persons might "consume" such beverages during that time).

It is well established that the titles and summary need not spell out every detail of a proposed initiative in order to convey its meaning accurately and fairly. *In re Title, etc., Regarding Proposed Initiative 1997-98 #74*, 962 P.2d 927, (Colo. 1998). Nor is the Board required to discuss every possible effect or provide specific explanations of the measure. *In re Title, etc., for 1999-2000 ##245(f) and 245(g)*, 1 P.3d 739 (Colo. 2000).

The Board is not required to describe every feature of a proposed initiative in a title or ballot title and submission clause, but it may not sacrifice a full and fair description of essential features of a measure for the sake of brevity. *In re Proposed Initiative on School Pilot Program*, 874 P.2d 1066, 1071 (Colo. 1994).

Summary is not intended to fully educate people on all aspects of the proposed law, and need not set out in detail every aspect of the initiative, but should "correctly and thoroughly summarize" its contents. *In re Proposed Constitutional Amendment Under the Designation of "Pregnancy"*, 757 P.2d 132, 137 (Colo. 1988). *Accord*, *In re Title Pertaining to Increase of Taxes on Tobacco Products*, 756 P.2d 995, 998 (Colo. 1988).

Summary is not required to mention the effect of a proposed amendment on an existing statute addressing the same or a similar subject. *In re Mineral Production Tax Initiative*, 644 P.2d 20, 24

(Colo. 1982) (declining to require board to include, in summary, a statement as to the initiative's implied repeal of an allegedly inconsistent tax statute); *In re Branch Banking Initiative*, 612 P.2d 96, 100 (Colo. 1980) (declining to require board to include language regarding implied repeal of existing statutory authorization for "detached [banking] facilities").

Board's documents are not required to describe or explain in detail existing constitutional provisions that would be repealed by an initiative. *In re Proposed Constitutional Amendment Under the Designation "Pregnancy"*, 757 P.2d 132, 137 (Colo. 1988).

Standard met where board summarized two provisions of proposal which allegedly conflicted, but did not render an opinion as to whether the presence of both provisions rendered proposal ambiguous. Indeed, to do so would have been an interpretation and therefore impermissible. *In re Proposed Initiative on Surface Mining*, 797 P.2d 1275 (Colo. 1990).

Standard met where title contained the word "scar", which, although arguably laden with prejudicial meaning, was one of the operative words in the initiative itself. Inclusion of this word in the title "fairly and accurately reported the intent of the proposed amendment." *In re Proposed Initiative on Surface Mining*, 797 P.2d 1275, 1280 (Colo. 1990). *Accord*, *In re Proposed Initiative on Transfer of Real Estate*, 611 P.2d 981 (Colo. 1980); *In re Workers Comp Initiative*, 850 P.2d 144 (Colo. 1993).

Standard met where title accurately reflected a reference in the text to "tax or debt campaigns", notwithstanding that the proposed amendment applied to issue committees that advocated for issues other than "tax and debt". *In re Title, etc., for 2005-2006 #73*, 135 P.3d 736 (Colo. 2006).

Standard met where ballot title and submission clause posed a compound question which could be answered "yes" or "no", indicating the voters' approval or rejection of both of the major components of the proposed amendment. *In re Proposed Initiative on Surface Mining*, 797 P.2d 1275 (Colo. 1990).

Standard met where title omitted change in hours during which alcoholic beverages could be sold, and change was held to be merely incidental to main purpose of initiative. *In re Proposed Initiative Concerning Drinking Age*, 691 P.2d 1127, 1132 (Colo. 1984).

Standard met where title did not distinguish between state and local elections, to which campaign financing limits applied, and federal elections, to which limits did not apply, but title did refer to proposal as affecting state constitution, and summary listed only state offices affected by the measure. *Matter of Petition on Campaign and Political Finance*, 877 P.2d 311, 314 (Colo. 1994).

Standard met where exemptions from key requirements of the measure were placed in the titles along with related information, rather than close to the beginning of the title, and where the titles included reference language instead of a full explication of every type of judicial officer

to which the measure applied. *In re Title, Ballot Title and Submission Clause and Summary for 1999-2000 ##245(f) and 245(g)*, 1 P.3d 739 (Colo. 2000).

Standard met where title and summary mentioned context of existing law into which initiated measure would fit, even though language was not derived from initiative itself. *In re Sale of Table Wine in Grocery Stores Initiative*, 646 P.2d 916, 921 (Colo. 1982).

Standard not met where title, although sufficiently brief, failed to mention central features of licensing scheme contained in proposal. *Dye v. Baker*, 143 Colo. 458, 354 P.2d 498 (1960).

Standard not met where one of central features of proposal was a new and foreseeably controversial definition of "abortion" which established that, for certain purposes, life legally begins at conception, and this feature of proposal was not noted in title or submission clause. *In re Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990).

Standard not met where summary stated broadly that services would not be included in tax base without approval of two-thirds of both houses of General Assembly, although services included as of a given future date would be so included, and legislature, while under no obligation to continue taxing such services, already was doing so. *In re Title Pertaining to "Tax Reform"*, 797 P.2d 1283, 1290 (Colo. 1990).

Standard not met where summary stated broadly that food would not be included in tax base without voter approval, although in some cases it would be, then stated that the measure "specifies exceptions to the uniform . . . tax base". *In re Title Pertaining to "Tax Reform"*, 797 P.2d 1283, 1290 (Colo. 1990).

Standard not met where title did not specifically mention that initiative would impose mandatory, nonsuspendable fines for certain campaign violations; would prohibit, not merely "limit", certain political contributions; would revise substantive as well as procedural provisions relating to elections; and would change number of seats in General Assembly, requiring reapportionment upon passage. *In re Proposed Election Reform Amendment*, 852 P.2d 28 (Colo. 1993).

Standard not met where title listed all important features of proposal, but "buried" features relating to one of the two main purposes between first and last clauses relating only to the other. *Matter of Proposed Constitutional Amendment Concerning Limited Gaming in the City of Antonito*, 873 P.2d 733, 742 (Colo. 1994).

Standard not met where title did not contain any indication that the geographic area to be affected was quite limited, thus posing a significant risk that voters statewide would misperceive the scope of the proposed initiative. *Matter of Proposed Initiative 1996-17*, 920 P.2d 803 (Colo. 1996).

Standard not met where title created confusion and was misleading because it did not sufficiently inform the voter of the parental-waiver process and its virtual elimination of bilingual education as a viable parental and school district option. *In re Ballot Titles 2001-2002 #21 & #22*, 44 P.3d 213 (Colo. 2002).

Use of word "legalize" in title adequately expressed intent of measure to require that local jurisdictions enact ordinances allowing limited gaming and that no local option was contemplated. Use of "legalize" rather than "mandate" or "require" did not unfairly imply that localities could exercise such discretion. *In re Proposed Constitutional Amendment Concerning Limited Gaming in Manitou Springs, Fairplay and in Airports*, 826 P.2d 1241 (Colo. 1992).

Title and summary were sufficient despite lack of specificity about scope of rulemaking power delegated to a commission created under the measure: "Addition of language detailing the commission's rulemaking power would increase the length of the title . . . while providing little information that would advance voters' understanding of the initiative. Because the delegation of rulemaking power is limited, we are satisfied that [this] omission . . . will not mislead voters." *In re Proposed Tobacco Tax*, 830 P.2d 984, 990 (Colo. 1992).

Title and summary were sufficient although they did not exactly track the language of statutory sections affected. *In re Proposed Initiative on "Fair Fishing"*, 877 P.2d 1355, 1360-63 (Colo. 1994).

Title and summary were sufficient despite lack of specificity about types of tax increases mandated by the measure: "[The proponent's suggested] language would provide a more detailed explanation . . . . However, [it] would not likely lead to improved voter understanding . . . because many voters may not realize or attach importance to the distinction between an excise tax and a sales tax. It is sufficient that voters are apprised, in general, that taxes on cigarette and other tobacco products would increase under the proposed measure." *In re Proposed Tobacco Tax*, 830 P.2d 984, 990 (Colo. 1992).

Title and summary were sufficient where title referred generally to "arbitration" and summary detailed the types of arbitration to which the initative was intended to apply. *In re Second Proposed Initiative Concerning Uninterrupted Service by Public Employees*, 613 P.2d 867, 871 (Colo. 1980).

Title was sufficient despite lack of specificity about extent of local control over mining operations, where word "regulation" was used to denote increase in requirements imposed on the mining industry. *In re Proposed Initiative on Surface Mining*, 797 P.2d 1275, 1280 (Colo. 1990).

Title and summary were sufficient where title described proposal as "prohibiting surface mining . . . that may scar the land surface" and these terms were derived from proposal itself, notwithstanding that all surface mining may be said to "scar the land surface" and therefore proposal allegedly would have practical effect of prohibiting all surface mining. Summary also

stated purpose of proposal as a flat prohibition of surface mining in the geographic areas encompassed by the proposal. *In re Proposed Initiative on Surface Mining*, 797 P.2d 1275, 1280, 1281 (Colo. 1990).

Title was sufficient where "main theme" of initiative was that fermented malt beverages not be made available to persons under twenty-one years of age, and title referred to the "selling, serving, or giving" of such beverages to such persons. Failure to mention "incidental" prohibitions on possession or consumption at certain places and times was not fatal. *In re Proposed Initiative Concerning Drinking Age*, 691 P.2d 1127, 1131 (Colo. 1984).

Title and summary were sufficient where title referred to "exempt positions" in context of state personnel system and neither title nor summary explained exemption concept in detail. *In re Proposed Initiative Concerning "State Personnel System"*, 691 P.2d 1121, 1123-24 (Colo. 1984).

Title and summary were not sufficient for proposed amendment dealing with "petition procedures" because they failed to convey the fact that the initiative created numerous retroactive fundamental rights unrelated to any procedural changes and provided no summary of certain provisions of the initiative. *Amendment to Const. Section 2 to Article VII*, 900 P.2d 104, 109 (Colo. 1995).

Title and summary were not sufficient for proposed amendment dealing with English language education in schools where title and summary omitted a key, material feature of the initiative allowing individual schools to determine whether to offer a bilingual program in addition to mandatory immersion programs. This feature would materially alter the stated feature of allowing parents to choose which educational program to enroll their children in, thus its omission had the potential to mislead voters. *In re Title, etc., for 1999-2000 #258(A)*, 4 P.3d 1094 (Colo. 2000).

3. Catch Phrases

The existence of a slogan or "catch phrase" is determined in the context of contemporary political debate. *In re Proposed Initiative 1996-6*, 917 P.2d 1277, 1281 (Colo. 1996), citing *In re Workers comp Initiative*, 850 P.2d 144, 147 (Colo. 1993) .

"'Catch phrases' are words that work to a proposal's favor without contributing to voter understanding. By drawing attention to themselves and triggering a favorable response, catch phrases generate support for a proposal that hinges not on the content of the proposal itself, but merely on the wording of the catch phrase." *In re Title, etc., for 1999-2000 #258(A)*, 4 P.3d 1094 (Colo. 2000).

A "catch phrase" consists of words which could form the basis of a slogan for use by those who expect to carry out a campaign for or against an initiated measure. *In re Title, etc., for 1999-2000 ##227 and 228*, 3 P.3d 1 (Colo. 2000).

"Catch phrase" was used where title of initiative to permit the granting of sales and use tax authority to local governments contained the gratuitous phrase ". . . and permitting replacement of general real estate or other taxes." Since local taxing authorities would be able to reduce such taxes regardless of the passage of the initiative, title was prejudicial and the quoted phrase was required to be deleted. *Henry v. Baker*, 143 Colo. 461, 354 P.2d 490 (1960).

"Catch phrases" were used where concepts of "consumer protection" and "open government" appeared prominently in titles and summary, but the former was too narrow and the latter was redundant in light of the measure's actual scope. These defects also rendered the board's documents misleading. *In the Matter of Proposed Initiative Designated "Governmental Business"*, 875 P.2d 871, 875-76 (Colo. 1994).

"Catch phrase" was used where language in title and submission clause, "as rapidly and effectively as possible," masked the underlying policy question regarding whether the most rapid and effective way to teach English to non-English-speaking children is through an English immersion program. *In re Title, etc., for 1999-2000 #258(A)*, 4 P.3d 1094 (Colo. 2000).

No "catch phrase" was used where "refund to taxpayers" appeared in title and summary. The court found no convincing evidence that those words constituted a catch phrase beyond comparison to issue before General Assembly in previous session concerning adherence to Amendment 1 involving refund of excess revenues. "The deterioration of a group of terms into an impermissible catch phrase is an imprecise process. We must be careful to recognize, but not create, catch phrases, and we do not now view 'refund to taxpayers' as such a phrase." *In re Title, etc., for 1997-98 ##105, 102 & 103*, 961 P.2d 1092, 1100 (Colo. 1998).

No "catch phrase" was used where the name of the "Southern Colorado Economic Development District" appeared in the board's title, submission clause, and summary. *In re Casino Gaming Initiative*, 649 P.2d 303, 308 (Colo. 1982).

No "catch phrase" was used where phrase "public's interest in state waters" was used in title and submission clause, and where petitioners failed to provide any evidence that the phrase constituted a catch phrase other than their bare assertion that it did. *In re Proposed Initiative 1996-6*, 917 P.2d 1277, 1281 (Colo. 1996).

No "catch phrase" was used in initiatives including the phrase "to preserve...the social institution of marriage" because the articulated purpose of the initiatives was to preserve the traditional societal notion of marriage as existing between a man and a woman. *In the Matter of the Title, etc., for 1999-2000 #227 and #228*, 3 P.3d 1 (Colo. 2000).

No "catch phrase" was used where the word "convenience", as used in the proposed legal standard "public need and convenience" embodied in the initiative itself, appeared in the board's title, submission clause, and summary. In re Branch Banking Initiative, 612 P.2d 96, 99, 100 (Colo. 1980). *Accord*, *In re Proposed Initiative on Transfer of Real Estate*, 611 P.2d 981, 983 (Colo. 1980)

(allegedly prejudicial language was taken verbatim from the initiative, hence was properly included).

B. Procedure

1. General

Quorum. Two members of the three-member board are sufficient to exercise the authority granted to the board. *In re Proposed Initiated Constitutional Amendment Concerning Unsafe Workplace Environment*, 830 P.2d 1031 (Colo. 1992); *In re Initiative Concerning "Taxation III"*, 832 P.2d 937 (Colo. 1992).

Appointment of designees. Since the title board is a creature of statute, the attorney general and the secretary of state may designate deputies to service in their place. *Matter of Title, etc.*, 900 P.2d 121 (Colo. 1995).

Testimony by proponents. Proponent's testimony as to "true intent and meaning" of a proposal should be considered by the board. The proponent best understands the reasons for the proposal, and not to consider such testimony would render the public meeting requirement meaningless. *In re Proposed Initiated Constitutional Amendment Concerning Unsafe Workplace Environment*, 830 P.2d 1031 (Colo. 1992). *But see Matter of Proposed Initiative on Water Rights*, 877 P.2d 321, 327 (Colo. 1994) (board was not required to add language suggested by proponents as clarifying their intent, where measure itself did not support the distinction they sought to make).

Identification of proponents. Requirement in § 1-40-101 (2), C.R.S., that proponents "designate two persons to whom all notices or information . . . shall be mailed" is an aid to efficient notification and not a jurisdictional requirement. The designation of more than two such persons does not affect the board's jurisdiction to fix titles, *In re Initiative Concerning "Taxation III"*, 832 P.2d 937, 942 (Colo. 1992), nor does the listing of only one such person without furnishing the person's address, *Matter of Proposed Constitutional Amendment Concerning Limited Gaming in the City of Antonito*, 873 P.2d 733, 739 (Colo. 1994).

Board is not bound by Administrative Procedure Act. Although correctly termed an "agency", the board is a special statutory body with its own unique function and specifically delineated procedures; its hearings are neither adjudicatory nor rulemaking hearings covered by general procedural requirements of the APA. *In re Title Pertaining to "W.A.T.E.R."*, 831 P.2d 1301 (Colo. 1992).

Election year not an issue. Questions about whether an initiative would be permitted to appear on an odd-year ballot were held irrelevant to board's task of setting title, etc. In re Workers Comp Initiative, 850 P.2d 144 (Colo. 1993); *In re Proposed Election Reform Amendment*, 852 P.2d 28 (Colo. 1993).

Standing to challenge titles. Where a registered elector appeared jointly with industry association and raised identical arguments, the industry association's asserted lack of standing would not be addressed. *In re Title, etc., for 1999-2000 #215*, 3 P.2d 447 (Colo. 2000).

Technical corrections of previously unrecognized errors may be made by the board in title-setting proceedings where changes embody the proponents' intent and where strict adherence to statute, with the consequent requirement of resubmission of an initiative, would frustrate proponents' exercise of their constitutionally granted right of initiative. *In re Casino Gaming Initiative*, 649 P.2d 303, 306, 311 (Colo. 1982).

Substantial compliance with statutory deadlines was held sufficient where one-day delay in completing title-setting hearing, which had already begun within statutory time period, was due to inadvertence and no one objected to continuance. *In re Second Proposed Initiative Concerning Uninterrupted Service by Public Employees*, 613 P.2d 867, 870, 871 (Colo. 1980).

Statutory challenge procedure is not exclusive. Ballot title may be challenged in court prior to election, even if statutory time limits have expired. *Glendale v. Buchanan*, 578 P.2d 221, 226 (Colo. 1978). *But see Polhill v. Buckley*, 923 P.2d 119, 121 (Colo. 1996) (courts lack subject matter jurisdiction to review legislative referendum for compliance with single-subject requirement unless and until referendum has been approved by the voters).

Relevant statutory standards, phrases, and citations are collected in narrative form in *In re Proposed Constitutional Amendment Concerning Limited Gaming in Manitou Springs, Fairplay and in Airports*, 826 P.2d 1241 (Colo. 1992), in part II of the opinion in *In re Proposed Tobacco Tax*, 830 P.2d 984, 988-89 (Colo. 1992), in *In re Workers Comp Initiative*, 850 P.2d 144 (Colo. 1993), and in *Matter of Proposed Tobacco Tax Amendment 1994*, 872 P.2d 689 (Colo. 1994).

2. Time Limits

"There is . . . no limit as to how early a petition for an initiative can be circulated or filed prior to an election, as long as the process is started after the previous general election." *In re Workers Comp Initiative*, 850 P.2d 144 (Colo. 1993).

Board had jurisdiction to meet and take action between June and the November election to act on proposed initiatives which would not be considered for the ballot in that same year. *Title, etc., for 1997-98 #30*, 959 P.2d 822, 824 (Colo. 1998).

Tax, debt, and spending measures are eligible for placement on odd- or even-year ballots. *Title, etc., for 1997-98 #30*, 959 P.2d 822, 824 (Colo. 1998).

Board has no power to set an election date or place any measure on the ballot; such power is vested in the Secretary of State alone. *In re Workers Comp Initiative*, 850 P.2d 144 (Colo. 1993); *In re Proposed Election Reform Amendment*, 852 P.2d 28 (Colo. 1993).

Questions about whether an initiative would be permitted to appear on an odd-year ballot were held irrelevant to board's task of setting title, etc. *In re Workers Comp Initiative*, 850 P.2d 144 (Colo. 1993); *In re Proposed Election Reform Amendment*, 852 P.2d 28 (Colo. 1993).

Substantial compliance with statutory deadlines was held sufficient where one-day delay in completing title-setting hearing, which had already begun within statutory time period, was due to inadvertence and no one objected to continuance. *In re Second Proposed Initiative Concerning Uninterrupted Service by Public Employees*, 613 P.2d 867, 870, 871 (Colo. 1980).

Where proponent failed to file motion for rehearing within 48 hours after action of title-setting board, he was barred from asserting excessive length of title for the first time on appeal to the supreme court. *In re Proposed Election Reform Amendment*, 852 P.2d 28 (Colo. 1993).

Where opponents failed to raise the issue of the use of the term "significant" versus "measurable" in the summary before the Board, either in their motion for rehearing or at the rehearing before the Board, they were barred from raising this contention as a grounds for reversing the Board. *In re 1999-2000 #265*, 3 P.3d 1210 (Colo. 2000).

Issues to be considered on rehearing must be raised in the first motion for rehearing. *See In re Title, etc.*, for 1999-2000 #219, 999 P.2d 819 (Colo. 2000).

Hearings on motions to reconsider decisions entered during the last meeting in May must be held within 48 hours of filing the motion in odd-numbered as well as even-numbered years. *Byrne v. Title Bd.*, 907 P.2d 570 (Colo. 1995).

3. Rehearings

Quorum. Rehearing before two members of board, where three members fixed title initially, does not violate constitution or statutes. A majority of the board has authority to act on behalf of the board. *In re Initiative Concerning "Taxation III"*, 832 P.2d 937 (Colo. 1992).

Attorney fees not awarded to proponents where request for rehearing and appeal were filed by opponent of measure acting in capacity of registered elector "not satisfied with the [board's designated] titles, summary, and submission clause" pursuant to section 1-40-102 (3)(a) [now § 1-40-107] and grounds for dissatisfaction were stated. *In re Proposed Tobacco Tax*, 830 P.2d 984 (Colo. 1992); *In re Title Pertaining to "W.A.T.E.R."*, 831 P.2d 1301, 1307 n. 1 (Colo. 1992).

An objector is permitted to bring only one motion for rehearing to challenge titles set by the Board, where the issues raised in the second such motion could have been raised in the first. To hold otherwise would allow an objector to stall an initiative indefinitely in the early stages, frustrating the general purpose of the initiative process. *In re Title, etc., for 1999-2000 #219*, 999 P.2d 819 (Colo. 2000).

The Title Board lacks jurisdiction to grant an objector's second motion for rehearing where the motion raises arguments that could have been made in the objector's first motion for rehearing. *In re Title, etc., for 1999-2000 #219*, 999 P.2d 819 (Colo. 2000).

4. Appeals

Jurisdiction. Courts lack subject matter jurisdiction to review legislative referendum for compliance with single-subject requirement unless and until referendum has been approved by the voters. *Polhill v. Buckley*, 923 P.2d 119, 121 (Colo. 1996).

Prerequisites. Challenge to titles brought by "registered elector" is not subject to procedural hurdles applicable to challenge by proponents, such as participation at hearings or preservation of issues for appeal. *In re Workers Comp Initiative*, 850 P.2d 144 (Colo. 1993).

Standards for review. "In reviewing the Board's title setting process, the law is settled that this court should not address the merits of the proposed initiative and should not interpret the meaning of proposed language or suggest how it will be applied if adopted by the electorate; we should resolve all legitimate presumptions in favor of the Board; and we will not interfere with the Board's choice of language if the language is not clearly misleading. Our duty is to ensure that the title, ballot title, submission clause, and summary fairly reflect the proposed initiative so that petition signers and voters will not be misled into support for or against a proposition by reason of the words employed by the Board. *In re Proposed Constitutional Amendment Concerning Limited Gaming in the Town of Burlington*, 830 P.2d 1023, 1026 (Colo. 1992)." *In re Workers Comp Initiative*, 850 P.2d 144 (Colo. 1993).

While Supreme Court on review may not address the merits of proposed initiative or suggest how initiative might be applied if enacted, Court must sufficiently examine initiative to determine whether or not the constitutional prohibition against initiative proposals containing multiple subjects has been violated. *Title, etc., for 1997-98 #30*, 959 P.2d 822, 825 (Colo. 1998); *In re Title, etc., for 2005-2006 #55*, 138 P.3d 273 (Colo. 2006). In construing an initiative for this limited purpose, the court employs the usual rules of statutory construction. *Title, etc., for 1997-98 #30*, 959 P.2d 822, 825 (Colo. 1998).

The General Assembly has squarely placed the responsibility for carrying out the dual mandates of the single-subject and clear title requirements on the Title Board, and the actions of the Board are presumptively valid. *In re Title, etc., for 1999-2000 #104*, 987 P.2d 249 (Colo. 1999).

Before clear title can be written, Board must reach definitive conclusion as to whether initiatives encompass multiple subjects. Absent such resolution, "it is axiomatic that the title cannot clearly express a single subject." *In re Title, etc., for 1999-2000 ##25-27*, 974 P.2d 458, 468-469 (Colo. 1999).

The presence of some redundant words does not by itself render Board's documents invalid; brevity is a relative measure, and court's task on review is not to edit the Board's language to the least common denominator. *In the Matter of Proposed Initiative Designated "Governmental Business"*, 875 P.2d 871, 875 (Colo. 1994).

Presumption of validity. "In evaluating the petitioner's objections, we are mindful that the Board's actions must be presumed to be proper so that the orderly progress of the initiative process is not impeded for other than substantial reasons. This protects the 'strong constitutional interest in the People's right to initiate constitutional amendments.'" *In re Proposed Initiative Concerning Drinking Age*, 691 P.2d 1127, 1132 (Colo. 1984) (citations omitted).

In reviewing the Board's actions setting the title and ballot title and submission clause, the Supreme Court will engage in all legitimate presumptions in favor of the propriety of the Board's actions. *In re Petition Procedures*, 900 P.2d 104, 108 (Colo. 1995).

Proponents gather signatures at their peril while appeal is pending. Signatures collected under a title later found misleading cannot be counted. *Matter of Proposed Constitutional Amendment Concerning Limited Gaming in the City of Antonito*, 873 P.2d 733, 743 (Colo. 1994).

The proponents of an initiative may commence circulating their petition for signatures after the Title Board has taken its final action in regard to the ballot titles and summary, pursuant to section 1-40-107 (1) and (5), C.R.S., and while that action is before the Colorado Supreme Court on appeal pursuant to section 1-40-107 (2). *Armstrong v. Davidson*, 10 P.3d 1278 (Colo. 2000).

Supreme Court's narrow scope of review of Board's actions does not include resolving issue whether Court can hold that proponents may not circulate a petition for signature until titles and summary have been fixed. *In re Title, etc., for 1997-98 ##105, 102 & 103*, 961 P.2d 1092, 1099 (Colo. 1998).

Matter remanded with directions to revise ballot documents to match language set out in opinion. *In re Proposed Initiative on Parental Notification of Abortions for Minors*, 794 P.2d 238, 242 (Colo. 1990); *Matter of Proposed Constitutional Amendment Concerning Limited Gaming in the City of Antonito*, 873 P.2d 733 (Colo. 1994); *Matter of Proposed Initiative on "Obscenity"*, 877 P.2d 848 (Colo. 1994).

Attorney fees under C.A.R. 38(d) not awarded to proponents where request for rehearing and appeal were filed by opponent of measure acting in capacity of registered elector "not satisfied with the [board's designated] titles, summary, and submission clause" pursuant to section 1-40-102 (3)(a) [now 1-40-107] and grounds for dissatisfaction were stated. *In re Proposed Tobacco Tax*, 830 P.2d 984 (Colo. 1992); *In re Title Pertaining to "W.A.T.E.R."*, 831 P.2d 1301, 1307 n. 1 (Colo. 1992).

5. Rules of Judicial Construction

Proponents' pre-election views irrelevant. "The [opponents of the initiative] express concern that if the initiative passes, the proponents, in subsequent litigation, will rely upon their briefs and testimony before the directors and the Board as evidence of the meaning of the amendment. This concern is misplaced. It is appropriate for the Board, when setting a title, to consider the testimony of the proponents concerning the intent and meaning of a proposal. . . . However, when courts construe a constitutional amendment that has been passed through a ballot initiative, any intent of the proponents not adequately expressed in the language of the measure will not govern that construction." *Matter of Proposed Initiative on Water Rights*, 877 P.2d 321, 327 (Colo. 1994).

Placement by proponents is relevant to intended scope. Where amendment was placed in revenue article of constitution (article X) and was replete with references to taxing, spending, and budgets, it was reasonable to conclude that election provisions applied only to elections on fiscal matters. *Zaner v. City of Brighton*, 917 P.2d 280 (Colo. 1996).

II. REVIEW AND COMMENT MEETING WITH LEGISLATIVE OFFICES

A. Substance

Purposes of review and comment meeting. The meeting: (1) "[P]ermits proponents of initiatives to benefit from the experience of independent experts in the important process of drafting language that may become part of this state's constitutional or statutory jurisprudence[,]" and (2) "[P]ermits the public to understand the implication of a proposed constitutional amendment at an early stage of the initiative process." *In re Amendment Concerning Limited Gaming in the Town of Idaho Springs*, 830 P.2d 963 (Colo. App. 1992) (measure remanded; had been significantly altered in scope after submission for review and comment); *In re Title Pertaining to "Tax Reform"*, 797 P.2d 1283, 1287 (Colo. 1990) (second measure, containing part of earlier measure, remanded; had not been submitted for review and comment at all).

B. Procedure

Necessity of review and comment meeting: Failure to hold meeting is "contrary to the plain language of Article V, Section 1 (5). . . . Here there was no such public meeting prior to setting the ballot title for the May initiative. The only public meeting was held prior to setting the ballot title for the April initiative. The April public meeting cannot serve as the constitutionally required predicate for setting two different titles for two initiatives. . . . [T]here is an overriding public purpose served by the presentation of comments and review in a public meeting," which is to "inform the public, as well as proponents, of the potential impact of the original draft of any proposed initiative." *In re Title Pertaining to "Tax Reform"*, 797 P.2d 1283, 1287 (Colo. 1990). *But see In re Second Proposed Initiative Concerning Uninterrupted Service by Public Employees*, 613 P.2d 867, 871 (Colo. 1980) (where proponents filed a "second version of essentially the same initiative," and directors of legislative offices indicated that a second meeting "would not be

necessary because they had no comments beyond those made on the first proposal", substantial compliance with statutory requirements had been shown).

Where a proposal is not presented to legislative offices for review and comment at a public meeting, or where the intent and meaning of central features of the proposal are so substantially altered, compared to an earlier version which was so presented, that it is in effect a new proposal, title board has no authority to fix a title to it. *In re Amendment Concerning Limited Gaming in the Town of Idaho Springs*, 830 P.2d 963 (Colo. App. 1992); *In re Title Pertaining to "Tax Reform"*, 797 P.2d 1283, 1287 (Colo. 1990).

Failure of proponents adequately to point out, or of legislative service agencies to question, a particular feature of a proposal is not fatal. Where title, submission clause, and summary all gave notice of the overlooked feature, proposal would not be remanded for another hearing. *Matter of Proposed Initiative for an Amendment Entitled "W.A.T.E.R."*, 875 P.2d 861, 868 (Colo. 1994).

III. SUGGESTED CHANGES TO §§1-40-101, ET SEQ.

A. Notice provisions

Notice provisions should be added which provide, at a minimum, for "[n]otice by publication in newspapers of general circulation reasonably prior to the title board's hearing, and notice of the title board's decision and rights of appeal published soon after the hearing", with the possible addition of similar notice of the review and comment hearing which, under the constitution, is to be held "only after full and timely notice to the public". Such notice is required in order to allow members of the public a meaningful opportunity to exercise the liberty interest granted by the state under art. V sec. 1 and §§ 1-40-101 et seq. *Montero v. Meyer*, 790 F. Supp. 1531 (D. Colo. 1992).

IV. SINGLE-SUBJECT REQUIREMENT

A. Purpose

The single-subject requirement limits the scope of an initiative to a single subject, which must be clearly expressed in its title. Amendment to Constitution Adding Section 2 to Article VII, 900 P.2d 104,108 (Colo. 1995); Matter of Title, Ballot Title, 917 P.2d 1277, 1279 (Colo. 1976).

Purpose of requirement is "to protect voters against fraud and surprise and to eliminate the practice of combining several unrelated subjects in a single measure for the purpose of enlisting support from advocates of each subject and which might not otherwise be approved by voters on the basis of the merits of those discrete measures." In re Proposed Initiative on School Pilot Program, 874 P.2d 1066, 1069 (Colo. 1994); Title, Ballot Title, & Submission Clause, 900 P.2d 121, 125 (Colo. 1995); In re Proposed Petition, 907 P.2d 586, 589 (Colo. 1995); In re Proposed Initiative on Parental Choice in Education, 917 P.2d 292, 294 (Colo. 1996).

The single-subject requirement is intended to ensure that each proposal depends upon its own merits for passage, and to forbid the joining of incongruous subjects in the same measure. In re Proposed Initiative "Public Rights in Water II", 898 P.2d 1076, 1078 (Colo. 1995).

B. Standards To Be Met

The same standards apply to single-subject review of citizen initiatives as apply to single-subject review of legislation enacted by the General Assembly. *In re Title, etc., for 1999-2000 #200A*, 992 P.2d 27 (Colo. 2000).

The Board may not set the titles of a proposed initiative or submit it to the voters if it contains multiple subjects. *In re Title, etc., for 1999-2000 ##245(b), 245(c), 245(d) and 245(e)*, 1 P.3d 720 (Colo. 2000).

A proposed measure violates the single-subject requirement if "its text relates to more than one subject and if ... it has at least two distinct and separate purposes which are not dependent upon or connected with each other." *In re Proposed Initiative "Public Rights in Waters II"*, 898 P.2d 1076, 1078-79 (Colo. 1995); *In re Title, etc., Regarding Petition Procedures*, 900 P.2d 104, 109 (Colo. 1995); *In re Proposed Petition*, 907 P.2d 586, 590 (Colo. 1995); *In re Proposed Initiative 1997-98 #30*, 959 P.2d 822 (Colo. 1998); *In re Title, etc., for 1997-98 ##84-85*, 961 P.2d 456, 458 (Colo. 1998).

Use of a generic title will not insulate a proposal from compliance with the applicable constitutional and statutory requirements. *In re 1999-2000 #29*, 972 P.2d 257 (Colo. 1999) (title containing term "judicial personnel" did not bring into one subject the two subjects of judicial officer qualifications and judicial discipline commission member qualifications); *In re Title, etc., for 2005-2006 #55*, 138 P.3d 273 (Colo. 2006) (title containing term "restrictions on non-emergency government services" did not bring into one subject the two subjects of (1) decreasing taxpayer expenditures on behalf of people not lawfully present in Colorado and (2) restricting unrelated administrative services that predictably would affect Colorado citizens).

An initiative that has separate and unconnected purposes will not be saved by a proponent's attempt to characterize the initiative under an overarching theme. *In re Proposed Initiative 2001-02 # 43*, 46 P.3d 438 (Colo. 2002); *In re Title, etc., for 2005-2006 #55 ("Restrictions on Non-Emergency Services")*, 138 P.3d 273 (Colo. 2006).

The General Assembly has squarely placed the responsibility for carrying out the dual mandates of the single-subject and clear title requirements on the Title Board, and the actions of the Board are presumptively valid. *In re Title, etc., for 1999-2000 #104*, 987 P.2d 249 (Colo. 1999).

Limited analysis is necessary. Section 1-40-106.5, C.R.S., obligates a reviewing court to examine an initiative for compliance with the single-subject rule prior to placement of the initiative on the ballot. Therefore, the court must engage in a limited analysis of its purposes and

potential applications. *In re Title, etc., for 2005-2006 #55 ("Restrictions on Non-Emergency Services")*, 138 P.3d 273 (Colo. 2006).

Proposed initiatives to repeal state constitutional provisions are not exempt from the single-subject requirement, notwithstanding that the provisions sought to be repealed were adopted in a single measure before the single-subject requirement was adopted. *In re Proposed Initiative #1996-4*, 916 P.2d 528, 532 (Colo. 1996).

Although broad, a title can meet the single-subject requirement as long as it is not misleading. *In re Proposed Petition for an Amendment to the Constitution of the State Of Colorado Adding Section 2 to Article VII (Petitions)*, 907 P.2d 586 (Colo. 1996) (title referred to petitions, but subject included both initiated and referred petitions).

Single-subject requirement for constitutional initiatives is to be liberally construed so as to deter practices against which it is aimed and to preserve and protect the right of initiative and referendum. *In re Title, etc.*, 900 P.2d 121, 125 (Colo. 1995).

Combining a $40 tax credit and future initiative procedural measures violated the single-subject requirement, and the infirmity was not cured by the fact that the initiative proposed amendments to an existing constitutional provision. That constitutional provision was not subject to the single-subject requirement when passed in 1992, and it contained multiple subjects. *In re Proposed Petition for an Amendment to the Constitution of the State of Colorado Adding Subsection (10) to Section 20 of Article X (Amend TABOR 25)*, 900 P.2d 121 (Colo. 1995).

An initiative with a single, distinct purpose does not violate the single-subject requirement simply because it spells out details relating to its implementation. As long as the procedures specified have a necessary and proper relationship to the substance of the initiative, they are not a separate subject. *In re Title, etc., Regarding Proposed Initiative 1997-98 #74*, 962 P.2d 927, (Colo. 1998).

Implementing provisions that are directly tied to the initiative's central focus are not separate subjects. *In re Title, etc., for 1999-2000 #258(A)*, 4 P.3d 1094 (Colo. 2000).

Enforcement details directly tied to the initiative's single subject will not, in and of themselves, constitute a separate subject. *In re Title, etc., for 2005-2006 #73*, 135 P.3d 736 (Colo. 2006).

Minor provisions necessary to effectuate the purpose of an initiative measure are properly within the scope of the single-subject rule. *In re Proposed Petition*, 907 P.2d 586, 590 (Colo. 1995).

"[T]he fact that an initiative may be intended to achieve more than one beneficial effect, i.e., the reduction of both air and water pollution, does not mean it embraces more than one subject, i.e., regulation of swine operations." *In re 1997-98 #113 (Commercial Swine Feed Operations)*, 962 P.2d 970 (Colo. 1998).

A proposed initiative does not necessarily contain more than one subject merely because it provides for alternative ways to accomplish the same result, if the alternative ways are related to and connected with each other. *Matter of Proposed Initiative 1996-17*, 920 P.2d 798 (Colo. 1996).

Despite the comprehensive nature of an initiative, it may still satisfy the single-subject requirement if: (1) the text of the initiative encompasses a single subject, and (2) the initiative does not attempt to further two or more unconnected purposes. *In re Proposed Initiative Bingo-Raffle Licensees (I) and (II)*, 915 P.2.d 1320 (Colo. 1996).

Where the opponents' arguments invite the court to speculate on the motivations of proponents of the initiative or construe the legal effect of the initiative as if it were law, such issues are outside the scope of the court's single-subject review. *In re Title, etc., for 1999-2000 #200A*, 992 P.2d 27 (Colo. 2000).

Summary of applicable standards. Method of analysis and application of principles governing single-subject review are summarized in *In re Title, etc., for 2005-2006 #73*, 135 P.3d 736 (Colo. 2006) and *In re Title, etc., for 2005-2006 #74*, 136 P.3d 237 (Colo. 2006).

C. Application Of Standards In Specific Cases

1. Measure Found To Satisfy Single-Subject Requirement

Requirement satisfied in comprehensive initiated measure that defined the right to petition and established a battery of procedures that governed the exercise of that right, as all of its numerous provisions related to the single purpose of reforming petition rights and procedures. *In re Title, etc.*, 900 P.2d 121, 125 (Colo. 1995).

Budgetary implications of an initiative concerning judicial personnel did not create a hidden second subject where the initiative did not mandate the creation or funding of magistrate positions, but allowed for the conversion of magistrate positions into article VI judgeships. Both the conversion and funding of those positions, should such occur, were found to be within the single subject of "judicial personnel." *In re Title, etc., for 1999-2000 ##245 (b), 245(c), 245(d) and 245(e)*, 1 P.3d 720 (Colo. 2000).

Proposed initiative was found to encompass a single subject although comprising both (1) the assessment of fees upon water pumped from beneath trust lands, and (2) the allocation of those fees for school financing. "The theme of the purpose of state trust lands and the educational recipient provides a unifying thread." *In re Title, etc., for 1997-98 ##105, 102 & 103*, 961 P.2d 1092, 1096 (Colo. 1998).

Requirement satisfied where initiative dealt with the qualifications, removal, and retention of judges and contained provisions dealing with the service of senior judges, a bar on the publication of Judicial Performance Commission reports, and provisions dealing with the recall of judges. *In re Title, etc., for 1999-2000 #104*, 987 P.2d 249 (Colo. 1999). *Accord*, *In re Title, etc., for*

1999-2000 ##245(f) and 245(g), 1 P.3d 739 (Colo. 2000) (term "judicial personnel", when read in context with limitations that excluded bailiffs and other persons serving in a non-judicial capacity, encompassed only judicial officers).

Requirement satisfied in proposed initiative that sought to establish a $60 tax credit that would have applied to six state or local taxes and required the state to replace local revenues that would have been lost as a result. *In re Title, etc., Regarding Amend TABOR 32*, 908 P.2d 125, 129 (Colo. 1995).

Requirement satisfied where, in initiative dealing with the conservation of undeveloped land, there was a sufficient connection between the election provision and the subject of the initiative. *In the Matter of the Title, Ballot Title and Submission Clause, and Summary for 1999-2000 #235(a)*, 3 P.3d 1219 (Colo. 2000).

Single-subject requirement was not violated where initiative established parent's right of control of their children in four distinct areas. "Because the Initiative relates to a single subject and does not encompass multiple unrelated matters, we conclude that it does not violate the single-subject requirement." *In re Proposed Ballot Initiative On Parental Rights*, 913 P.2d 1127, 1131 (Colo. 1996); *In re Proposed Initiative on Parental Choice in Education*, 917 P.2d 292 (Colo. 1996).

Requirement satisfied in set of proposed initiatives concerning gaming activities conducted by nonprofit organizations that addressed what games of chance may be conducted, who may conduct such games, and how such games may be conducted. *In re Proposed Initiative Concerning Bingo-Raffle Licenses I*, 915 P.2d 1320, 1325 (Colo. 1996).

Requirement satisfied in proposed initiative concerning “the public’s interest in state waters” which addressed both the “public trust doctrine” and the assignment of water use rights to the public or a watercourse. *Matter of Title, etc.*, 917 P.2d 1277, 1281 (Colo. 1996).

Requirement satisfied where effect of initiative on school board's power did not constitute a separate, distinct, or unconnected subject but instead was a logical incident of adopting English immersion as the chosen method of teaching non-English speaking students. *In re Title, etc., for 1999-2000 #258(A)*, 4 P.3d 1094 (Colo. 2000).

Requirement satisfied in proposed initiative with the primary subject of English-language acquisition by teaching in English that also required that children be provided an English-language public education at their public school of choice. The initiative did not create a new constitutional duty to provide children generally with public education because Colo. Const. art. IX, § 2 provides a general duty to educate, and the measure did not impose an unlimited new requirement for school "choice". *In re Ballot Titles 2001-2002 #21 & #22*, 44 P.3d 213 (Colo. 2002).

2. Measure Found Not To Satisfy Single-Subject Requirement

Requirement not satisfied in proposed initiative dealing with "petition procedures" which (1) contained provisions concerning the nature of the rights of initiative, referendum, and recall and altered the procedures for the exercise of such rights; (2) provided that charter or constitutional provisions approved after 1990 shall create fundamental rights; (3) authorized individual or class-action suits to enforce the measure; (4) authorized awards of costs to successful plaintiffs who enforce such petitions by means of civil litigation and to defendants if such civil actions are frivolous; and (5) established certain common-law standards for judicial interpretation and construction of such petitions. *Amendment to Const. to Add Section 2 to Article VII*, 900 P.2d 104, 109 (Colo. 1995).

Language "within all tax and spending limits" violated single-subject requirement. The initiative contained at least two subjects: (1) tax cuts, and (2) mandatory reductions in state spending on state programs. *In re Title, etc., for 1997-1998 ##86 and 87*, 962 P.2d 245 (Colo. 1998).

Requirement not satisfied in proposed initiative concerning "government revenue changes" that established a tax credit and set forth several procedural requirements for future ballot titles. Since the tax credit was not dependent upon nor connected to the procedures for adopting future initiatives, the measure contained more than one subject, regardless of the fact that the common characteristic of "revenue" was attributable to both subjects. *In re Title, etc.*, 900 P.2d 121, 125 (Colo. 1995).

Initiative that would repeal constitutional requirement of at least one judge in each judicial district, repeal the City and County of Denver's control over county court judges, confer absolute immunity upon individuals who, outside a courtroom, criticize a judicial officer concerning his or her qualifications, and reorganize the Commission on Judicial Discipline contained multiple subjects. The initiative carried a broad title, "Concerning Judicial Officers", and a following trailer. The court held that many of the initiative's provisions sought to achieve purposes that bore no necessary or proper connection to the qualifications of judicial officers, the sole purpose argued by the Title Board. Two justices dissented, saying the majority did not properly construe the proposed initiative liberally. *In re 1997-1998 #64*, 960 P.2d 1192 (Colo. 1998).

Initiatives with the primary purpose of liberalizing the procedure for initiative and referendum petitions, but which also contained provisions that precluded attorneys from taking part in title-setting, contained at least two distinct and separate purposes which were not dependent upon or connected with each other. *In re 2003-2004 #32 & #33 and Failure to Set Title for 2003-2004 #21 & #22*, 76 P.3d 460 (Colo. 2003); *In re 2003-2004 #53 & #54 and Failure to Set Title for 2003-2004 #51 & #52*, 77 P.3d 747 (Colo. 2003).

Requirement not satisfied where initiative, with stated purpose of establishing state judicial qualifications, served separate and discrete purposes unrelated to judicial officer qualifications, including setting judge per district ratio; conferring absolute immunity upon judicial critics,

limiting powers of Judicial Discipline Commission, and depriving home rule cities of control over municipal judges. *In re Title, etc., for 1997-98 #95*, 960 P.2d 1204, 1208-09 (Colo. 1998).

Requirement not satisfied in proposed initiative that sought to repeal parts of article X, sec. 20 ("TABOR") addressing spending and revenue limits, elections, local responsibility for state-mandated programs, and emergency reserves. Title "Limited Government Spending" stated too broad and general a concept to serve the purposes furthered by the single-subject requirement. *In re Proposed Initiative #1996-4*, 916 P.2d 528, 532 (Colo. 1996). *Accord*, *In re 1999-2000 #29*, 972 P.2d 257 (Colo. 1999) (initiative using the term "judicial personnel" did not bring into one subject the two subjects of judicial officer qualifications and judicial discipline commission member qualifications).

Requirement not satisfied in proposed initiative containing two distinct subjects, tax cuts and mandatory reductions in state spending on state programs, which had separate purposes. While requiring the state to replace affected local revenue in itself is sufficiently related to a tax cut, requiring the state separately to reduce its spending on state programs was not dependent upon and clearly related to a tax cut. Thus, both subjects did not encompass "a single definite object or purpose." *In re Title, etc., for 1997-98 ##84-85*, 961 P.2d 456, 460 (Colo. 1998).

In proposed initiative dealing with tax cuts and previous voter-approved revenue and spending increases, language of provisions dealing with voter-approved revenue and spending increases was buried within tax cut language. Thus, voters could be enticed to vote for measure in order to enact tax cut while not realizing that passage would simultaneously achieve a purpose not necessarily related to tax cut. *Title, etc., for 1997-98 #30*, 959 P.2d 822, 826-827 (Colo. 1998).

Proposed initiatives contained at least four separate and unrelated purposes in violation of the single-subject requirement. There was no necessary connection between the initiatives' central purpose of modifying the process by which initiative and referendum petitions are placed on the ballot and the additional purposes of modifying the content of initiative and referendum petitions that are placed on the ballot, preventing the repeal of the TABOR amendment in a single initiative, and protecting private property rights from the referendum process. *In re Proposed Initiative 2001-02 #43*, 46 P.3d 438 (Colo. 2002).

Proposed initiative nominally dealing with "time limits for ballot issues authorized by article X, Section 20," actually included at least three distinct subjects: (1) Time limits for tax measures; (2) Time limits for public debt authorizations; and (3) Time limits for voter-authorized relief from spending limits. *In re Title, etc., for 2005-2006 #74*, 136 P.3d 237 (Colo. 2006).

Requirement not satisfied in proposed initiatives where there was no necessary and proper connection between (1) establishment of local tax cuts and (2) audit responsibilities that relate to the enforcement of other constitutional provisions. *In re Title, etc., for 1999-2000 ##172-175*, 987 P.2d 243 (Colo. 1999).

Requirement not satisfied in proposed initiative concerning public water rights where paragraphs dealing with district election had no necessary connection with paragraphs dealing with public trust water rights, notwithstanding that all provisions involved "water". *In re Proposed Initiative "Public Rights in Water II"*, 898 P.2d 1076, 1080 (Colo. 1995).

Requirement not satisfied in proposed initiative concerning restrictions on non-emergency government services where there was no necessary and proper connection between (1) decreasing taxpayer expenditures on behalf of people not lawfully present in Colorado and (2) restricting unrelated administrative services that predictably would affect Colorado citizens. *In re Title, etc., for 2005-2006 #55*, 138 P.3d 273 (Colo. 2006).

G.6 Rules for Staff of Legislative Council and Office of Legislative Legal Services Review and Comment Filings

Rules For Staff of Legislative Council and Office of Legislative Legal Services

G.7 Prioritized Checklist for Drafting Titles and Ballot Title and Submission Clauses for Proposed Initiatives

(Prepared by Jason Gelender, September 27, 2012)

I. Top Priority. Always keep the big picture in mind. The ultimate goal is simply to draft a value-neutral title and ballot title and submission clause that makes it more likely than any other value-neutral language that you can think of that the voters will understand what they're voting on.

II. Second Priority. Avoid voter surprise (deciding what to include).

Step 1. Identify the single subject of the initiative. The single subject should simply give notice of the general subject matter of the initiative. Think of the single subject as an umbrella under which all of the "central features" of the initiative fit and save description of the "central features" for the trailer.

Step 2. Identify the central features of the initiative and include them in the trailer. Central features are typically matters of significance to all persons concerned with the issues addressed by the initiative. Try to determine whether voters are likely to consider some central features more significant than others, and if they are, list the central features in descending order of significance. Otherwise list them in the order in which they are set forth in the initiative.

Step 3. Read what you have drafted so far and make sure that the general effect of a "yes/for" or "no/against" vote would be clear to the average voter. If the language seems complex, try to use simpler words that mean the same thing. Strive for brevity.

III. Third Priority. Avoid Misleading or Perpetrating Fraud on the Voters (deciding what to exclude).

Step 1. Read what you have drafted so far and change any catch phrase to value-neutral language. A catch phrase is a word or words that could easily be used as the basis of a slogan for proponents or opponents of the initiative. Whether a word or phrase is a catch phrase depends upon the context of contemporary debate. The case annotations to section 1-40-106, C.R.S., provide examples of words and phrases that have and have not been held to be catch phrases. If you are in doubt, see if you can easily substitute simple clear more value-neutral language. In many cases, you can.

Step 2. Check to see if you have repeated words or phrases from the text of the initiative that the initiative defines or uses in a way that is likely to mislead or confuse the average voter. If you have, try to substitute different words or phrases that are less likely to be misleading or confusing.

IV. Fourth Priority. Ensure TABOR Compliance. Determine whether your initiative concerns matters arising under the Taxpayer's Bill of Rights (TABOR) because TABOR requires special ballot title language requirements for such initiatives. You can find these requirements in article X, section 20 (3)(b) and (3)(c) of the Colorado constitution and in section 11.2.1 of this manual. **Language in an initiative that refers to taxes, bonds, borrowing, debt, or, in some cases fees or charges should raise your TABOR antennae.** If you don't know whether an initiative is subject to TABOR requirements, please consult with a member of the Government Team.

V. Last Priority. Check for Technical Errors. Make sure that the language of the title and the ballot title and submission clause match (see section 11.2.1 of this manual if this direction is not clear to you) unless the initiative is subject to TABOR, in which case see the example of a title set by the Title Board in section G.4 of this manual or consult with a member of the Government Team. Check spelling and punctuation.

VI. Additional Resources. Pages 11-6 and 11-7 and portions of Appendix G of the Drafting Manual address the drafting of titles and ballot titles and submission clauses. Sections 1-40-106 and 1-40-106.5, C.R.S., govern Title Board proceedings and the application of single-subject requirements to initiatives, and both sections are also heavily annotated.

G.8 Initiatives - Standard Language for Review and Comment Memos

Note: The following questions may be used in the preparation of a review and comment memo. They are intended as a tool to help save time and provide uniformity on issues that regularly arise in the review and comment process. Some questions may not be appropriate for inclusion in your memo or may need to be modified or omitted as circumstances require.

G.8.1 Creating the Review and Comment Memo

On your desktop, go to the "MS Word Templates" folder. Create the memo using the template stored here. Store the memo at s:\public\ballot\2015-2016cycle\2016 rev & comment memos\[appropriate year and initiative #].docx.

G.8.2 Unnecessary Technical Comments - Do Not Include

The following are technical comments that are unnecessary. For some of the below items, it is unnecessary to have the proponents change the appearance of the initiative because it will appear correctly in the election notices and in our publications (the formatting will be fixed). Some of the comments should be omitted because the comment is not particularly helpful or because it is unnecessary to force the proponents to use an OLLS writing convention. Don't use the following technical comments. Just don't.

1. The serial comma, assuming that its absence does not create an ambiguity.
2. Indenting the beginning of a line.
3. Comments related to the line spacing and spacing between sentences, etc.
4. Generally stating a preference for the active voice. If a sentence without an actor is unclear, a substantive question or comment should be included.
5. Font size or style.
6. Subtract "C.R.S." from a citation that is unnecessary because the cited section is in the same title.
7. Subtract or delete citation information that is unnecessary in the citation according to OLLS formatting style (e.g.., this article 22).
8. Type of quotation marks used.

9. Making the following changes to existing statutory or constitutional language: gender neutral, which/that, active voice, or changing such or said.

10. Changing numerals into words.

G.8.3 Technical Comments That Are Often Needed

In addition to the most commonly used technical comments included in the review and comment memo shell, the following technical comments often arise. Modify as needed.

G.8.3.1 Commas

It is standard drafting practice to set off nonessential phrases (i.e., introductory, parenthetical, or prepositional phrases) with commas.

It is standard drafting practice to use commas to connect two independent clauses.

It is standard drafting practice to separate coordinate adjectives with a comma.

G.8.3.2 Numbering of Statutes and Constitution

Constitutional/Statutory provisions are often divided into subsections, paragraphs, subparagraphs, and sub-subparagraphs for ease of reading. Consider breaking the text of the proposed initiative into separate subsections, paragraphs, etc., as follows:

G.8.3.3 Strikes/Small Caps/Capitalization

It is unnecessary to capitalize "general assembly" in the proposed initiative.

In subsection _, the paragraph letters should not be shown in small capitals, but instead should be shown in lowercase lettering.

It is standard drafting practice to only capitalize proper nouns, such as "Colorado," "South Platte river," "Pike's Peak community college," [use an example from the initiative].

G.8.3.4 Internal References in the Colorado Revised Statutes:

Guidelines for statutory citations:

When you are referencing the section you are currently in, the section number does not need to be referenced. For example:

> **1-1-105.5. District elections.** (1) (b) Except when a contestor to elector qualifications has been timely initiated as described in **this section**, this section validates ... [emphasis added]

The number or letter of what you're referencing needs to be specified for every other level of reference, even when you're referring to a provision within the same:

1. Title: "this title 1"
2. Article: "this article 1"
3. Part: "this part 1"
4. Subsection: "this subsection (2)"
5. Paragraph: "this subsection (2)(a)"
6. Subparagraph: "this subsection (2)(a)(I)"
7. Sub-subparagraph: "this subsection (2)(a)(I)(b)

G.8.3.5 Definitions

The following is the standard drafting language used for creating a definition: "As used in this [section][subsection][paragraph], unless the context otherwise requires, '[term]' means (the definition for the term)...". [For use with a single definition]

The definitions should be in alphabetical order.

It is standard drafting practice to use terms that have been defined for a particular [section], [part], or [article.] The following terms are defined in section __, Colorado Revised Statutes, for this new provision and can be used in the proposed initiative.

G.8.3.6 References

Because the proposed initiative is adding language to the Colorado constitution and it is referring to entities outside the constitution, consider adding the phrase, "or a successor statute/officer/agent/committee" to every reference to a statute, entity, etc.

G.8.3.7 Miscellaneous

Use the singular form of a noun whenever possible.

It is standard drafting practice to avoid using archaic terms. In subsection (1), instead of using "herein", use "in this section".

G.8.3.8 Example for Adding to/Amending the Constitution

If the proposed initiative is to be added to the Colorado constitution as a new article, it should include an article heading. For example, the article heading for article XXVIII of the Colorado constitution appears as follows:

ARTICLE XXVIII

Campaign and Political Finance

If the proposed initiative is to be added as a new section within an existing article of the Colorado constitution, it should include a section number and headnote. For example, section 6 of article XVIII of the Colorado constitution appears as follows:

> **Section 6. Preservation of forests.** The general assembly shall enact laws in order to prevent the destruction of, and to keep in good preservation, the forests upon the lands of the state, or upon lands of the public domain, the control of which shall be conferred by congress upon the state.

G.8.3.9 Internal References in the Constitution

When referencing the section you are currently in, the section number does not need to be referenced. For all other article and section divisions, the number or letter of what you are referencing should be specified for every level of the reference. For example:

1. This section
2. This article XXX
3. Article XIX of the Colorado constitution
4. Section 20 of article X of the Colorado constitution
5. Section 20 (3)(b) of the Colorado constitution
6. Subsection (5)(b)(II) of section 9 of article XVIII of the Colorado constitution

G.8.4 Substantive Comments and Questions

The following are examples of comments and issues that should be considered substantive (NOT technical):

Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.

Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?

An initiative proposal should indicate where the text of the proposed measure will be located in the state constitution or the Colorado Revised Statutes.

The words being added in the definitions subsection are already defined in section #-#-###, Colorado Revised Statutes, and apply to the entire article. Is it your intention to change their meaning for the proposed section? If not, what is your intention in defining them again? Do you intend for the definitions in section #-#-### to apply to the entire article or just to that section?

Pursuant to article V, section 1 (2) of the Colorado constitution, proposed initiatives must amend either the Colorado constitution or state law (i.e., the Colorado Revised Statutes). The proposed initiative should be revised to indicate whether it amends the Colorado constitution or the Colorado Revised Statutes and to show where in the constitution or statutes its provisions should be inserted.

What will be the effective date of the proposed initiative?

As a statutory change, the proposed initiative may be amended by subsequent legislation enacted by the General Assembly. Is this your intention?

As a change to the Colorado constitution, the proposed initiative may only be amended by a subsequent amendment to the constitution. Is this your intention?

Standard drafting practice is to use the word "fund" to refer to an account into which "moneys" or "revenues" are placed. Therefore, the word "fund" or "funds" is not typically used to refer to the moneys or revenues themselves. Would the proponents consider changing the phrase "funds" to "moneys" or "revenues"?

Have the proponents considered any fiscal or other impacts that may result from the enactment of the proposed initiative on [the state/local governments in this state]? Insofar as enactment of the proposed initiative were to lead to a strain on governmental resources, have the proponents considered incorporating a tax, fee, or some other mechanism that would allow some of the costs of the proposed initiative to be recovered?

If the Following Issues Arise, Address Them in a Substantive Question:

- For a statutory initiative, are the authority verbs consistent with the definitions in section 2-4-401, Colorado Revised Statutes? If not, is the meaning unclear?
- Does the use of passive voice make the initiative ambiguous?
- Does the use of "such" or "any" make the initiative ambiguous?

- Serial comma use - if one is omitted, does it create an ambiguity?

G.8.5 When Different Versions of an Initiative Are Submitted - Separate Memos - Don't Repeat Comments

When proponents submit similar review and comment memos together in a group or in quick succession, **create a separate review-and-comment memo** for each submission. However, you may incorporate by reference questions that were asked in one memo that also apply to the other proposed initiatives. Choose one of the following:

> No new technical comments/substantive comments and questions were raised by this proposed initiative.

Note: The following language is unnecessary if the introductory portion of the memo (before the Purposes Section) already contains a paragraph about earlier versions of an initiative and the comments and questions being incorporated by reference. However, **if that language is not used**, you may want to state the following to avoid repeating technical comments or substantive comments and questions:

> Technical comments/Substantive comments and questions [number(s) of the comments or questions] from the memo for proposed initiative [number of previous initiative] apply to initiative [number of current initiative].The technical comments/substantive comments and questions set forth in the review and comment memorandum on proposed initiative [number of previous initiative] are applicable to proposed initiative [number of current initiative] and, as such, will not be repeated. [However, the following new technical comment/substantive comment and question has arisen:] (**use the last part if there are new comments**).

G.8.6 When an Initiative Is Submitted Without Key Requirements

When proponents submit an initiative that is lacking key requirements, the following substantive comments may be useful. (Some are duplicative of substantive questions listed for standard initiatives.)

1. Under article V, section 1 (2) of the Colorado constitution, proposed initiatives amend either the Colorado constitution or state law (i.e., the Colorado Revised Statutes).
    a. Does the proposed initiative amend the Colorado constitution or the Colorado Revised Statutes?

b. Additionally, in accordance with section 1-40-102 (4), Colorado Revised Statutes, and for publication purposes, an amending clause should be used to show where in the Colorado constitution or Colorado Revised Statutes a proposed initiative's provisions should be inserted. Where will the proposed initiative be placed? (Please indicate through an amending clause where the proposed initiative will be placed.)

2. Article V, section 1 (5) of the Colorado constitution and section 1-40-102 (4), Colorado Revised Statutes, require a proponent to submit for review and comment the full text of the measure being proposed, which, if passed, becomes the actual language of the constitution or statute. [**include the appropriate sentence below to clarify the problem:**]

    a. You have submitted an idea, rather than the actual language that would be added to the Colorado constitution or Colorado Revised Statutes. Please amend your proposal to include the actual text of your proposed constitutional or statutory change.

    b. The text of the proposed initiative appears to be a ballot title/submission clause, rather than actual language that would be included in the Colorado constitution or the Colorado Revised Statutes. Please amend your proposal to include the actual text of your proposed constitutional or statutory change.

3. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado:". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.

4. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?

G.8.7 When an Initiative Comprises a Copy of a Concurrent Resolution or Bill

1. The proposed initiative appears to be based on a concurrent resolution [bill]. For purposes of the proposed initiative, do not include [**delete anything that doesn't apply**] the short title/bill topic, long title, resolution [bill] summary, the first clause beginning "WHEREAS," the line numbers, the stock language in sections 1, 2, and 3 of the concurrent resolution, the safety clause, the "act subject to petition" clause. The proposed initiative should begin with the first amending clause ("**SECTION 1.** In the constitution of the state of Colorado, amend section ___ of article __ as follows:") and contain only the portion that amends the Colorado constitution [Colorado Revised Statutes].

2. The enacting clause in the proposed initiative should be changed to comply with article V, section 1 (8) of the Colorado constitution, which requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado:".

Appendix H: Rule-Making Authority

H.1 Broad Rule-Making Authority

Remember that broad rule-making authority is a delegation of legislative power and should not be done lightly. For more information on rules, see section 6.6 of this manual.

H.1.1 Department Rule-making Example

See section 6.6.2.1 of this manual about avoiding ambiguity and granting rule-making authority to specific individuals when possible.

> **39-23.5-###. Administration by department - action for collection of tax - appeals - limitations - rules.** (1) The department shall administer and enforce this article 23.5 and may adopt rules to effectuate the purposes of this article 23.5. The department shall adopt the rules in accordance with article 4 of title 24.

H.1.2 Executive Director Rule-making Example

> **27-1-###. Employment of personnel - rules.** (6) The executive director may adopt rules as necessary to implement this section. The executive director shall adopt the rules in accordance with article 4 of title 24.

H.2 Specific Rule-Making Authority

H.2.1 Extent of Department's Rule-making Authority is Limited

In this example, the department is required to adopt rules that include the standards, but the introductory portion of (2) limits what the department can include in the rules to specific topics.

> **26.5-5-###. Standards for facilities and agencies - rules.** (1) The department shall prescribe and publish standards for licensing. The standards must be applicable to the various types of facilities and agencies for child care regulated and licensed by this part #. The department shall seek the advice and assistance of persons representative of the various types of child care facilities and agencies in establishing the standards, including the advice and assistance of the department of public safety and councils and associations representing fire marshals and building code officials in the adoption of any rules related to

adequate fire protection and prevention, as allowed in subsection (2)(e) of this section, in a family child care home. The standards must be established in rules adopted by the executive director in accordance with article 4 of title 24.

(2) The standards prescribed by department rules are restricted to:

(a) The operation and conduct of the facility or agency and the responsibility it assumes for child care;

(b) The character, suitability, and qualifications of the applicant for a license and of other persons directly responsible for the care and welfare of children served, including whether an affiliate of the licensee has ever been the subject of a negative licensing action;

(c) The general financial ability and competence of the applicant for a license to provide necessary care for children and to maintain prescribed standards;

(d) The number of individuals or staff required to ensure adequate supervision and care of children served;

(e) The appropriateness, safety, cleanliness, and general adequacy of the premises, including maintenance of adequate fire protection and prevention and health standards in conformance with state laws and municipal ordinances, to provide for the physical comfort, care, well-being, and safety of the children served.

(f) Keeping of records for food, clothing, equipment, and individual supplies;

(g) Provisions to safeguard the legal rights of children served;

(h) Maintenance of records pertaining to the admission, progress, health, and discharge of children;

(i) Filing of reports with the department;

(j) Discipline of children. The rules must prohibit the imposition of corporal punishment, as defined in section 22-1-140, upon a child by any person employed by or volunteering in a child care center, a family child care home, or a specialized group facility.

(k) Standards for the appropriateness, safety, and adequacy of transportation services of children to and from child care centers; and

(l) Rules governing different types of family child care homes as well as any other types of family child care homes that may by necessity be established by rule of the executive director.

H.2.2 Rule-making Limited to Specified Subjects

24-#-###. Rules. (1) In order to carry out the purposes of this part #, the state risk manager may adopt reasonable rules governing the following:

(a) The administration of the programs authorized in this part #;

(b) The management and administration of the investigation and adjustment of claims brought against the state, its officials, and its employees and of claims of state agencies for loss or damage to state property;

(c) The management and administration of legal defense of claims brought against the state, its officials, and its employees;

(d) The general supervision of parties that have contracted with the state to provide claims investigation, claims adjustment, support services, or legal services;

(e) Specifications on documents required to present a claim for compromise or settlement;

(f) Specifications on documents required to discharge or hold harmless the state from liability under a claim;

(g) Standards for compromising and settling claims brought against the state or against a state official or employee whose defense has been assumed by the state.

H.2.3 Individual Limited to Categories of Rule-making

27-50-104. Powers and duties of the commissioner - rules. (1) (a) The commissioner may adopt "commissioner rules" for behavioral health programs administered and services provided by the BHA as listed in section 27-50-105 (1). The rules must be adopted in accordance with section 24-4-103.

(b) Any rules adopted by the executive director of the department of human services prior to July 1, 2022, to implement the behavioral health programs to be administered and services to be provided by the BHA listed in section 27-50-105 (1), and whose content meets the definition of "executive director rules"

pursuant to section 26-1-108, are effective until revised, amended, or repealed by the commissioner.

(2) "Commissioner rules" are solely within the province of the commissioner, except those determinations precluded by authority granted to the state board of human services. "Commissioner rules" must include:

(a) Matters of internal administration in the BHA, including organization, staffing, records, reports, systems, and procedures;

(b) Fiscal and personnel administration for the BHA; and

(c) Accounting and fiscal reporting rules for disbursement of federal funds, contingency funds, and proration of available appropriations.

(3) Whenever a statutory grant of rule-making authority in this title 27 refers to the BHA, it means the behavioral health administration acting through either the state board of human services, the commissioner, or both. When exercising rule-making authority pursuant to this title 27, the BHA shall promulgate rules consistent with the powers and the distinction between "board rules" as set forth in section 26-1-107 and "commissioner rules" as set forth in this section.

(4) The rules adopted by the commissioner pertaining to this title 27 are binding upon the behavioral health providers, vendors, and agents of the BHA. At any public hearing relating to a proposed rule, interested persons have the right to present the person's data, views, or arguments orally. Proposed rules of the commissioner are subject to section 24-4-103.

H.3 Amending Clauses for Rules in a Bill (That's Not the Rule Review Bill)

The Committee on Legal Services sponsors the annual Rule Review Bill, which contains its recommendations to the General Assembly on which executive branch rules should expire pursuant to the provisions of section 24-4-103 (8), C.R.S., on the grounds that the rules exceed or lack statutory authority or conflict with a statute. The Rule Review Bill is drafted to either postpone or extend rules based on the automatic expiration of May 15. Sometimes the Committee addresses rules that are not subject to the automatic expiration in section 24-4-103 (8), C.R.S., because of the rule's adoption date, in which case the rule is included in the Rule Review Bill in a nonstatutory section that repeals the rule.

See section 6.6.6 of this manual for more information on rule review and the Rule Review Bill.

The purpose of this section H.3 is to provide some examples of how to draft a provision when a legislator wants to amend or repeal a rule in a bill that is separate from the Rule Review Bill. Amending executive agency rules in a legislative bill raises serious issues about whether the General Assembly would be violating separation of powers. An amendment to a rule raises the potential encroachment upon the separation of powers between the branches, because the power to write rules is an executive branch function not a power of the legislative branch. The drafter should discuss these issues with a legislator who wants to do a bill or amendment to a bill that rewrites the text of a rule and advise against taking that course of action. The separation of powers issues are usually not present in a bill that repeals a rule.

A general format has been established for amending or repealing agency rules that is similar to the amending clauses for statutory sections; however, the elements needed for a given amendment or repeal may differ from these examples depending upon the circumstances. Also, since there is no uniform numbering system for rules in the Code of Colorado Regulations, the citations to the rules will be unique to the agency involved. Drafters should follow the same citation rules that are used when citing to rules in rule review memos for the Committee on Legal Services. When citing to a rule, cite to the smallest subdivision possible. Make the rule citation identical to the way it appears in the Code of Colorado Regulations, putting in all punctuation marks and putting a space between the numbers or letters for every level of indentation Do not add punctuation or parentheses that do not exist in the rule.

After the rule citation, the Code of Colorado Regulations cite, and the word "concerning," the section needs to include a word-for-word repetition of the first few words of the rule or the subdivision's title if you are affecting that entire subdivision. The drafter may need to consult with the rule review supervisor for assistance about how to refer to rules in the bill or amendment.

The drafter should also notify the rule review coordinator if the drafter amends or repeals an agency rule in a bill, because legislative action affecting the rule may need to be coordinated with the Rule Review Bill and because the rule review coordinator informs the secretary of state about any legislative action taken on rules in the Code of Colorado Regulations. In addition, it is recommended that a notification clause be included in either an amendment or repeal of a rule.

H.3.1 To Amend a Rule

> **SECTION 1. Amendment to the Code of Colorado Regulations.** In the Rules of the Secretary of State, Department of State, governing Bingo and Raffles Games, amend Rule 4.0 A. 6. d. (8 CCR 1505-2), concerning any person who is working or assisting at any occasion, as follows:

H.3.2 To Repeal a Rule

SECTION 2. Repeal of rule in the Code of Colorado Regulations. In the Rules of the Water Quality Control Commission in the Department of Public Health and Environment governing water and wastewater facility operators certification requirements, repeal Rule 100.24.3 (c) (5 CCR 1003-2), concerning any person affected or aggrieved by a decision of the Board's designee or the Division and the relief requested.

H.2.3 To Repeal a Rule and Include a Notification Clause

In the following example, in subsection (1), the effective date for the repeal was included in the amendment to ensure that the repeal took effect immediately; however, this could be included in an effective date clause for the bill. In subsection (1), the date on which the rule was adopted (March 28, 2006) was included to make the amendment parallel to amendments used in the rule review bill and may not be necessary in a separate bill. Subsection (2) is a notification clause that addresses how the Secretary of State would be notified to remove a repealed rule from the printed and on-line publications of the Code of Colorado Regulations. This clause would be modified if the rule was amended.

SECTION 3. Repeal of rule in the Code of Colorado Regulations. (1) In the Rules of the Department of Revenue [governing Sales and Use Tax - Special Regulations for Specific Businesses] repeal[, effective March 1, 2025,] Special Regulation 7: Computer Software, [which rule was adopted March 28, 2024,] concerning the type of software subject to sales or use tax (1 CCR 201-5).

(2) The office of legislative legal services shall forward a copy of House Bill 10-####, enacted in 2010, to the secretary of state for purposes of informing the secretary of state of the general assembly's action repealing Special Regulation 7. The secretary of state shall delete Special Regulation 7 from the code of Colorado regulations and include an appropriate reference of such repeal in the code of Colorado regulations consistent with the provisions of section 24-4-103 (11), Colorado Revised Statutes.

Appendix I: Glossary

ACT: A bill which has been approved or "enacted" by both houses of the General Assembly and has become a law either with or without the Governor's signature. The acts adopted in each session of the legislature are published annually in bound volumes, called the Session Laws of Colorado. Acts are also compiled, edited and published in Colorado Revised Statutes.

ADHERE: A parliamentary procedure whereby, in response to some conflicting action by the other house, one house votes to stand by its previous action.

ADJOURNMENT: A legislative house either ends its business day by adjourning until a stated time or day or until the time fixed by its rules for reconvening. Neither house may adjourn for longer than 72 hours without the consent of the other. Sine die ("without day") adjournment is the final action of a legislative session.

AMENDMENT: Changes in a bill or other proposed legislation that may be offered either by a committee or an individual legislator in the form of an amendment.

APPORTIONMENT: The act performed immediately following a federal census, of drawing House and Senate district boundaries.

APPROPRIATIONS BILL: A bill authorizing the spending of public money.

BICAMERAL: A legislature with two houses. These houses are identified in Colorado as the Senate and House of Representatives. Only Nebraska has a unicameral (one house) legislature.

BIENNIUM: A two-year period, used to describe the term of a legislature.

BILL: A proposed law to amend or repeal an existing law or create a new law.

BODY: One house of the General Assembly. The term is often used in floor debate to refer to the house where debate is occurring.

CALENDAR: A listing of the bills (and other proposed legislative matters) reported from committees and ready for consideration by the entire membership of the House or Senate. The calendar also lists meetings of committees scheduled for that day or for the next several days. Like the Journal, the calendars are available to the public each day the legislature meets.

CALL OF THE HOUSE OR CALL OF THE SENATE: A motion supported by ten Representatives or five Senators to cause absent members to be compelled to return to the floor of their respective chambers to consider and vote upon important legislative matters. During the call, chamber doors are locked and legislators are not permitted to leave the chambers.

CALL, THE: The proclamation of the Governor or of a two-thirds vote of the members elected to each house convening the General Assembly in special session and stating the necessity for the session. The

legislature is restricted to considering only matters pertaining directly to the call.

CARRIED: "Carried" like "adopted", means to consent or accept.

CAUCUS: A caucus is a meeting of members of a political party. Positions, policies, and strategies on pending legislation may be discussed in caucuses.

CHAIR: The chair is a term used to describe the presiding officer. For example, a member inquires, "How did the chair rule on the point of order?" or, responding, "The chair rules the amendment out of order."

CHAMBER: The room in which the Senate or the House of Representatives meets.

CITATION: A specific reference to a section, subsection or paragraph of law or to a portion of a bill.

CLERK OF THE HOUSE: Chief administrative officer of the House of Representatives.

COMMITTEE: A committee is a group delegated to perform specific functions. Legislatures use a number of different committee formats:

A conference committee is appointed by the House Speaker and the Senate President to see what can be done when the houses have agreed in principle but differ in detail on a specific piece of legislation.

When either house meets to debate bills calendared for general orders they are referred to as a committee of the whole.

Joint committees are composed of House and Senate members, or sometimes non-legislators, and generally meet during the period between legislative sessions in the interim.

CONCURRENCE: When one house agrees to an amendment adopted by the other house, the action is known as concurrence.

CONCURRENT RESOLUTION: Proposes amendments to the state constitution, or recommends the holding of a constitutional convention, or ratifies proposed amendments to the federal constitution. Concurrent resolutions are treated as bills, except that they do not

have the same limits on the time of introduction and rate of dispatch through the legislative process.

CONFERENCE COMMITTEE: Actually two committees, one from each house, meeting together to attempt to work out language acceptable to the Senate and House on some measure upon which agreement could not be reached through committee or floor amendments. A majority of the members of the committee must agree before the conference committee report may be submitted to the Senate and House. Neither house is obligated to accept the report but usually they do since the alternative could be the failure of the legislation.

CONFIRMATION: The action of the Senate in accepting appointments, typically made by the Governor.

CO-SPONSOR: The legislator introducing a bill is known as the prime sponsor and his name appears first on the bill jacket, on the

first page of the bill, and in the journal. Those who "sign on" after third reading with their endorsement of the bill are known as co-sponsors.

C.R.S.: Colorado Revised Statutes, the compilation of Colorado laws.

DEMAND: A seldom used and rarely successful procedure to force a bill out of committee and to the floor of the House or Senate.

DISTRICT: The area from which a Senator or Representative is elected. The boundaries of districts are redrawn in the decennial reapportionments.

DIVISION: A vote, whereby the number of proponents and opponents are counted. It differs from a roll call vote in that a division does not attribute a particular vote to a certain person.

EFFECTIVE DATES: A law generally becomes effective, or binding, either upon a date specified in the law, or in the absence of such date, upon signature of the governor.

ENACTING CLAUSE: The Constitution requires that each law be prefaced by the phrase "Be it Enacted by the General Assembly of the State of Colorado." An amendment to strike the enacting clause "kills" a proposed law.

ENGROSSED BILL: When a bill has been amended in the house in which it was first introduced, it is written to show the amendments adopted. This version is known as the engrossed bill.

ENROLLED BILL: After both houses have agreed upon the language of a bill, it is called an enrolled bill. This is then signed by officers of the House and Senate and sent to the Governor for signature.

EX OFFICIO: An officer who serves in one position by virtue of holding another. The person may or may not be a voting member.

FIRST READING: This occurs when a bill is officially introduced into one of the houses of the legislature, read by title by the reading clerk, and noted in the journal.

FISCAL NOTE: A fiscal note states the estimated amount of increase or decrease in revenue or expenditures for the present and future of a bill. Each bill with fiscal implications must have a fiscal note before being acted upon by a committee of reference.

FLOOR, THE: This is synonymous with the House or Senate chamber, as when a Senator or Representative says, "I'm going to the floor." Or, in stating an intention to speak at a floor session, "I'm going to take the floor." A member is declared to have the floor when the presiding officer recognizes him for the purpose of speaking.

GRANDFATHER CLAUSE: A provision in a bill which exempts a person from a proposal's coverage based on the person's present status.

HB: House Bill.

HCR: House Concurrent Resolution.

HEWI: An acronym for the Health, Environment, Welfare, and Institutions Committee.

HJR: House Joint Resolution.

HM: House Memorial.

HOUSEKEEPING BILL: A bill of no significance beyond the codifying or updating of laws eliminating obsolete sections. However, some "housekeeping bills" go beyond a simple cleaning up of the law. As a result, the term, particularly when used to preface an explanation of the bill by a floor sponsor, may cause a close scrutiny of the measure by the sponsor's colleagues.

HR: House Resolution.

INITIATIVE: Procedure used by citizens to originate a change to the law or state constitution.

INTERIM: The period between regular legislative sessions is known as the interim. Committees appointed to study a problem during this period are known as interim committees.

INTERN: A volunteer, often a college student, who assists a legislator during the session.

ITEM VETO: The Governor has the power to selectively veto items in appropriations bills. Usually, this means items in the Long Bill, which is the major funding bill for the operations of state government for a fiscal year.

JOINT RESOLUTIONS: Joint Resolutions pertain to the transaction of the business of both houses, establish investigating committees composed of members of both houses, or express the will or sentiment of both houses on any matter.

JOURNAL: The official record of the proceedings of each house. The House and Senate issue their own on a daily basis during the session. The journals record only highlights of what has happened in the legislature, including the titles of bills introduced, committee actions, and the way members voted on bills after the floor debate. The journal is not a verbatim record.

LAW: The final product of the legislative process. It is the end result of the introduction of a bill, its passage by both houses, and its approval by the Governor (or the overriding by the Legislature of his veto), and its recording by the Secretary of State. A statute is a law after it has been organized, by topic, into the compiled body of laws known as Colorado Revised Statutes.

LEGISLATIVE DAYS: Legislative days are regarded the same as calendar days; each day after the session starts and until adjournment is counted as a legislative day even though the General Assembly may not be meeting on a particular day, such as a Saturday or Sunday.

LINE-ITEM: An item which appears in an appropriations bill on a separate line.

LOBBY: The term derives from the fact that lobbyists usually frequent the areas (lobbies) adjacent to the chambers of the Senate and the House, either seeking to buttonhole legislators as they walk to and from the chambers or await legislative action which might affect their interest. Individual citizens may also "lobby" their legislators on matters of concern to them. The House and Senate require the registration as a lobbyist of persons (except legislators and

authorized staff) who seek to encourage the passage, defeat or modification of legislation.

OUT OF ORDER: A departure from parliamentary procedure, or a violation of rules.

PINK BOOK: A pocket sized directory listing names of legislators, their addresses, occupations, and committee assignments. It also lists the names of House and Senate employees.

POINT OF ORDER: An objection raised by a legislator that one of the rules is being or has been violated.

POSTPONE INDEFINITELY: A motion to postpone indefinitely (PI) a bill has the same effect as moving to kill a measure.

PRESIDENT: The presiding officer in the Senate. He is designated by the majority party in caucus and then elected by the body for a term of two years. He may be reelected. The President refers bills and other legislation to committees. He presides over the meetings of the Senate, recognizes those members who wish to speak, accepts motions, and signs all legislative acts (passed bills and resolutions), and vouchers for payment from Senate funds.

PRIME SPONSOR: The first legislator to sign a bill for introduction is known as the "prime sponsor." The prime sponsor's name appears first not only on the original bill but on the printed act.

PRINTED BILL: The bill as introduced before any amendments are made to it.

QUORUM: The Constitution requires a majority of the members elected to a house to be present for the transacting of legislative business. Thus, a quorum is a majority. However, a smaller number may adjourn from day to day and compel the attendance of absent members.

RECALL: When a house of the General Assembly seeks return of a bill from the other house or from the Office of the Governor.

RECESS: Recess is the period of time that the General Assembly or either of its houses are not in session after once having been convened. Recess includes stated periods, such as those for lunch, and informal periods, when the members await the presiding officer's call to return. An informal recess may be necessitated by a caucus, or while the House awaits the arrival of the Senate for a joint session.

REENGROSSED BILL: The bill as passed on third reading in the house of introduction and including all amendments adopted by that house. The reengrossed bill is transmitted to the second house.

REVISED BILL: The bill passed on second reading in the second house. It includes any amendments made to the bill on second reading by the second house.

REREVISED BILL: Includes amendments made by the second house on third reading. The rerevised bill is transmitted back to the house of origin for any action that it may have to take on the bill or for enrollment and transmittal to the Governor for his action.

ROLL CALL: The calling of the names of members of the House or Senate or a committee to determine the presence of a quorum or to act upon a matter. In the House the roll is taken by machine.

SECOND READING: The stage where initial floor debate occurs.

SESSION: This term has two meanings. A session may be the daily meeting of the senate or house. It may also be the regular, special, or organization session, meaning the whole period for which the legislature has been called together. Two annual or "regular" sessions make up a General Assembly. Thus the 57th General Assembly included the 1989 regular session and the 1990 regular session.

SESSION LAWS: The Session Laws of Colorado, usually one or two bound volumes are published each year and contain the work product (acts, resolutions and memorials) of that year's session of the General Assembly.

SEVERABILITY CLAUSE: A severability clause provides that should a court declare one portion of a law invalid, it is the stated intention of the General Assembly that the remainder should stand.

SINE DIE: "Sine die" means "without day." Adjournment sine die is the action which concludes a session of the General Assembly. A joint resolution is adopted by the two houses to fix the hour of adjournment sine die.

SJR: Senate Joint Resolution.

SPEAKER: The presiding officer of the House of Representatives. He is designated as speaker by the majority party in caucus and then elected by the full membership of the House for a term of two years. He may be reelected. The Speaker appoints the members of all committees and designates the chairman and vice chairman of each. He assigns bills and other legislation to committees. He presides over the meetings of the house, recognizes those members who wish to speak, accepts motions at his pleasure, and signs all legislative acts and vouchers for payment from house funds. He also designates temporary presiding officers who serve in his absence.

SPECIAL SESSION: A session of both houses, called by the Governor or on its own initiative, where the General Assembly meets to carry out legislative business.

SPONSOR: A bill's sponsor is understood to be the legislator who introduced it, although he may have done so at the request of someone who is not a member of the General Assembly. There is always one House and one Senate sponsor for each bill. The Governor may recommend the passage of a bill, but only a member of the legislature may introduce a bill.

SUNRISE: This describes the administrative and legislative procedure for evaluating the requests of organized professional or occupational groups to be regulated by the state of Colorado. See § 24-34-104.1, C.R.S.

SUNSET: "Sunset" involves the periodic review of state agencies that exercise the state's regulatory authority over occupations. Agencies are terminated by

specified dates unless their life is extended by legislative action. See Title 2, Article 3, part 12, C.R.S. See also § 24-34-104, C.R.S.

SUNSHINE: The Colorado sunshine law has three parts: a public official's disclosure provision, a part on the regulation of lobbyists, and an open meetings law. The act was adopted in 1972. See Title 24, Article 6, C.R.S.

TITLE: The Colorado constitution states that no bill, except general appropriation bills, shall pass containing more than one subject, which must be clearly expressed in its title.

TRIBUTES: Nonlegislative actions which do not require introduction in the House or Senate or discussion or debate by either chamber. Tributes usually take the form of expressing the congratulations, recognition, appreciation, greetings or sentiment of the General Assembly.

VETO: After both houses have passed a bill, and it becomes an act, the Governor has the constitutional right to veto the measure. If he receives the act during a legislative session, the Governor has ten days to make his decision. The vetoed bill, with a statement by the Governor of his objections, is returned to the legislative house in which the bill originated. If readopted by a two-thirds vote of the members present in each house, the act becomes law despite the Governor's objections. If he receives the bill after the legislature has adjourned for the year, the Governor has 30 consecutive days to act.

VETO MESSAGE: The letter the Governor sends to the legislature giving his reasons for rejecting (vetoing) a bill after it has passed the House and Senate.

VOTE: The Colorado constitution requires the recorded yeas and nays of individual members on the final passage of all legislation. A voice vote is sufficient for adoption of amendments and some other matters, although a roll call can be demanded

Appendix J: Policies, Procedures, and Memos Regarding OLLS Legal Opinions & Memorandums; Confidentiality of Work Product; Working with Lobbyists; and the Role of Legislative Staff

Find the OLLS Style Guide for Legal Memos here.

J.1 Substantive Memorandum Formats and Procedures

J.1.1 Format

The office has three formats to use when responding to a member's request for a written product. The following is a description of each format:

1. **Legal Opinion** - This option is sent from the Office of Legislative Legal Services, rather than a drafting attorney, and is on full letterhead. Legal opinions are memos that state a legal opinion fully vetted by the office. A legal opinion must use the Garner format unless the attorney has explained to the attorney's team leader or supervisor why use of a different format is necessary and the team leader approves the use of the proposed alternative format. A legal opinion is an official office position.

2. **Memorandum** - This option is sent from the authoring attorney and is placed on attorney-specific letterhead. A team leader must review a memorandum. A memorandum should be written when responding to a member's request that either does not require a legal opinion or requires only the individual attorney's legal opinion

   Any topic properly included in a research memorandum, such as a description of a section's legislative history, is an example of a memorandum that does not include a legal opinion. Sometimes a legislator may not need an opinion that fully vetted by the Office, or the deadline may preclude such review.

The authoring attorney chooses the format of the memorandum, but everyone is encouraged to use the Garner format, unless it is not suitable for the specific response required. The memorandum will have a different footnote that states the opinion is that of the authoring attorney and is not an official OLLS opinion.

3. **Email response** - This response is from an individual attorney, and any review is left up to the discretion of the authoring attorney. But if the email includes a novel legal conclusion or complex analysis, then a team leader should review it. The authoring attorney chooses the appropriate format of the email, but everyone is encouraged to use the Garner format when possible. Everyone is encouraged to add email responses to Knowledgebase and to copy the email into the "other" option in Knowledgebase.

Some areas of law generate a lot of questions from various members of the General Assembly, their constituents, or the general public, so the office has developed an "Interested Persons" memo format that provides general information from the office to the General Assembly as a whole or to the general public. An "Interested Persons" memo is titled "Memorandum," comes from the office, is addressed to "Interested Persons," is on office letterhead, is fully vetted, and is made available on the OLLS public website.

J.1.2 Footnotes

Here is a table that summarizes when to use each footnote:

	From	Review Level	Footnote
Legal Opinion	OLLS	Full	1A (bill drafting & plenary authority), 2A (bill drafting), 3A (plenary authority), or 4A
Memorandum	Attorney	Team Leader	1B (bill drafting & plenary authority), 2B (bill drafting), 3B (plenary authority), or 4B
Interested persons memorandum	OLLS	Full	Customized by author

	From	Review Level	Footnote
Email	Attorney	Author discretion	no

Here are the footnotes from the chart above:

FN 1A (Bill Drafting Function, Plenary Authority, Legal Opinion) - This legal opinion results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly, in the course of its performance of bill drafting functions for the General Assembly. An OLLS legal opinion does not represent an official legal position of the General Assembly or the state of Colorado and does not bind the members of the General Assembly. The opinion is intended for use in the legislative process and as information to assist the members in the performance of their legislative duties. Consistent with the OLLS' position as a staff agency of the General Assembly, an OLLS legal opinion generally resolves doubts about whether the General Assembly has authority to enact particular legislation in favor of the General Assembly's plenary power.

FN 1B (Bill Drafting Function, Plenary Authority, Memorandum) -This memorandum results from a request made to the authoring attorney in the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly, in the course of performing bill drafting functions for the General Assembly. This memorandum reflects the legal analysis of the authoring attorney. This memorandum does not represent an official legal position of the OLLS, the General Assembly, or the State of Colorado and does not bind the members of the General Assembly. The memorandum is intended for use in the legislative process and as information to assist the members in the performance of their legislative duties. Consistent with the OLLS' position as a staff agency of the General Assembly, an OLLS memorandum generally resolves doubts about whether the General Assembly has authority to enact particular legislation in favor of the General Assembly's plenary power.

FN 2A (Bill Drafting Function, Legal Opinion) - This legal opinion results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly, in the course of its performance of bill drafting functions for the General Assembly. An OLLS legal opinion does not represent an official legal position of the General Assembly or the state of Colorado and does not bind the members of the General Assembly. The opinion is intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

FN 2B (Bill Drafting Function, Memorandum) - This memorandum results from a request made to the authoring attorney in the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly, in the course of performing bill drafting functions for the General Assembly. This memorandum reflects the legal analysis of the authoring attorney. This

memorandum does not represent an official legal position of the OLLS, the General Assembly, or the State of Colorado and does not bind the members of the General Assembly. The memorandum is intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

FN 3A (Plenary Authority, Legal Opinion) - This legal opinion results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly. An OLLS legal opinion does not represent an official legal position of the General Assembly or the State of Colorado and does not bind the members of the General Assembly. The opinion is intended for use in the legislative process and as information to assist the members in the performance of their legislative duties. Consistent with the OLLS' position as a staff agency of the General Assembly, an OLLS legal opinion generally resolves doubts about whether the General Assembly has authority to enact particular legislation in favor of the General Assembly's plenary power.

FN 3B (Plenary Authority, Memorandum) - This memorandum results from a request made to the authoring attorney in the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly. This memorandum reflects the legal analysis of the authoring attorney. This memorandum does not represent an official legal position of the OLLS, the General Assembly, or the State of Colorado and does not bind the members of the General Assembly. The memorandum is intended for use in the legislative process and as information to assist the members in the performance of their legislative duties. Consistent with the OLLS' position as a staff agency of the General Assembly, an OLLS legal memorandum generally resolves doubts about whether the General Assembly has authority to enact particular legislation in favor of the General Assembly's plenary power.

FN 4A (Legal Opinion) - This legal opinion results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly. An OLLS legal opinion does not represent an official legal position of the General Assembly or the State of Colorado and does not bind the members of the General Assembly. The opinion is intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

FN 4B (Memorandum) - This memorandum results from a request made to the authoring attorney in the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly. This memorandum reflects the legal analysis of the authoring attorney. This legal memorandum does not represent an official legal position of the OLLS, the General Assembly, or the State of Colorado and does not bind the members of the General Assembly. The memorandum is intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

J.1.3 Process for Legal Opinions and Legal Memorandums

Upon receiving a new research request (a legal opinion, legal memo, side-by-side comparison, chart, etc.), use the Knowledgebase system to input the request. All such requests must be logged into the system. The system will prompt you to input certain data in order to create the request. You will have the option of assigning the request to yourself or having the appropriate team leader assign it. Once the request is assigned, the system will prompt the person receiving the request (hereinafter "drafter") to answer a series of questions that determines the level of review necessary for the research. There are three levels of review: "high" which requires review by a team leader and one or more higher level attorneys; "medium" which requires review by a team leader; and "low", which allows for discretionary review by a team leader. Only after the level of review is determined will the drafter be able to create the working document in Knowledgebase.

After an attorney receives a memo request, the attorney should discuss with the attorney's team leader whether the memo must be reviewed by the Director or the Director's designee (the designee may be in place of or in addition to the Director), or by the team leader only. Next, the attorney will conduct the necessary research and determine a line of reasoning and conclusion for the memo. After that, the attorney will email either a brief description of the issue, line of reasoning, conclusion, or outline to the reviewer(s) (team leader, the Director, and the Director's designee if involved) and schedule a time for the attorney and reviewer(s) to meet and discuss the issue.

At the meeting, the drafter and reviewer(s) should discuss the issue and come to a consensus regarding its direction and conclusion. The discussion "tests" the conclusion and helps the attorney lay out the arguments that lead to the conclusion. The meeting will also allow the reviewer(s) to lend their institutional knowledge to the issue. At the end of the meeting, the attorney and reviewer(s) will set a deadline for the memo and discuss the workload priority level of the request related to the attorney's other workload.

For a request requiring a high or medium level of review, the drafter will conduct the necessary research, including whether the office has previously taken a position on the issue. After the attorney completes the memo for review, the attorney will give the memo to the team leader for review. After review, the team leader will give the memo to the Director and the Director's designee if they will be reviewing it as well. The Director and the Director's designee can then send the memo back to the attorney for finalization. The team leader and the Director (and the Director's designee) will also have the option of sending the memo back to the attorney for revision that requires review again by that person.

Once the legal opinion or memo is in its final form, the drafter must mark the request completed in the database, choose the categories that describe the different subjects that the opinion or memo addresses, and ensure that the subject entry still matches the request. This information

will be attached to the document as a part of search options and the completed opinion or memo will be stored in a database. The database will be searchable by the inputted subject, key phrases, and full text.

For additional information about the process please refer to the Knowledgebase tutorial which you can locate by opening Knowledgebase, clicking on “Help”, and then “Using This Application”.

J.2 Policies, Guidelines, and other Considerations Regarding OLLS Legal Opinions and Legal Memorandums

J.2.1 Legal Opinions, Legal Memorandums, and the Legislative Environment

The different roles the OLLS plays in the legislative process impact the manner in which the Office approaches the preparation of legal opinions and legal memorandums.

The attorney role. As attorneys, we are expected to reflect knowledge of the law, expertise, and judgment characteristic of attorneys. The opinion of an attorney about what the law is or what the law means is accorded a higher status than the opinion of a non-attorney.

In this role, the Office acts as in-house counsel and represents the General Assembly in legal actions. As in-house counsel, the Office provides legal advice to the General Assembly as an institution rather than performing legal services for one or more individual members as clients. We also represent the General Assembly in litigation arising out of legislative actions and other litigation in which the General Assembly has an institutional interest.

The legislative staff role. As legislative staff, we are expected to reflect a service orientation and recognize that our job is to support the legislative process and the members by providing services that enable them to perform their legislative duties, including making legislative policy decisions.

Our primary duty is to write legislation that embodies a member's chosen legislative policies. In the course of performing this duty, we advise members and others who rely on our professional expertise and judgment in drafting new law and modifying existing law. While much of what we tell them relates to legislative drafting practice and procedure, our advice also inevitably includes matters that affect legislative policy, such as constitutional issues raised by members' legislation.

OPINIONS AND MEMORANDUMS COMMONLY REQUESTED

Often, requests for opinions and memorandums relate to the conduct of the legislative process itself, such as the "rules of the game" or the conduct of legislative business and the administration of legislative agencies. Generally, these opinions and memorandums do not have readily apparent policy implications and are not viewed as intruding on legislative policy. These types of legal opinions and legal memorandums commonly involve:

- Constitutional rules of legislative procedure and constitutional provisions that govern legislative procedure that have been interpreted as a result of litigation involving the General Assembly. Examples include the single subject and original purpose rules governing amendments to bills, the requirement that revenue raising bills be introduced in the House of Representatives, the GAVEL amendment, the speech and debate clause, and the governor's exercise of the governor's constitutional veto power.

- Statutes that govern the conduct of the legislative process and legislative business, such as the sunshine law, ethics laws, and the statutes governing the compensation of legislators, legislative department contracts, and legislative employment practices.

- Adopted rules of legislative procedure, such as the rules of the House and of the Senate and the joint rules of both houses.

A second area in which the Office receives a frequent number of requests for legal opinions and legal memorandums is the separation of powers. While the policy implications are more apparent in this area, our involvement in related constitutional litigation and in legislative review of administrative rules has tended to overcome most fears of intrusion in the province of legislative policy. Issues that frequently arise in this area involve:

- The nature and extent of the legislative appropriation power by which the General Assembly controls the expenditure of money. Examples include questions regarding the ability of the Governor to cut the budget, whether certain types of money are subject to appropriation, and the extent of the General Assembly's ability to place conditions on appropriations.

- Permissible delegations of legislative power, including the delegation of authority to the executive branch to adopt rules and the appointment of legislators to boards and commissions.

Other subject-matter areas in which the OLLS regularly receives requests for legal opinions and memorandums include initiated measures and laws governing the conduct of state government in general; the initiative and referendum process; public school finance; and subject matters that OLLS attorneys have become deeply involved with through the bill drafting process. These areas may or may not have apparent policy implications; when they do, they are accompanied by the risk of intrusion into legislative policy.

J.2.2 General Policies on Legal Opinions and Legal Memorandums

October 27, 1994

(Revised October, 2005; December 2007; August 2024)

In recent years, the number of requests for legal opinions[1] and legal memorandums[2] from the Office has been increasing. The increasing number of requests is a mixed blessing. The Office should be encouraged that our understanding of the law is sought and has credibility. On the other hand, the legal opinion or legal memorandum must be carefully and thoroughly researched and must state our understanding of the law as clearly and coherently as possible.

The importance of the Office's task in preparing legal opinions and legal memorandums is emphasized by the fact that a legislative policy decision can turn on a conclusion reached in a legal memorandum regarding the meaning or legal effect of a constitutional or statutory provision, pending or potential legislation, or case law or a discussion of the current state of the law contained in a legal memorandum. Increasingly, members are asking for and relying on legal opinions that take a position on legal issues as well as legal memorandums that support such a position. As a result, the Office has become more involved in representing the General Assembly in legal matters relating to legislative actions taken in reliance on OLLS legal opinions and legal memorandums.

While OLLS legal opinions and legal memorandums aid the performance of legislative functions, there is always the danger that the Office or an attorney in the Office will be criticized for writing a legal opinion or legal memorandum that may be construed as controlling or dictating a legislative policy decision. This is a situation to be avoided, if possible, so that the determination of legislative policy remains in the province of the elected members.

Due to the sensitive nature of preparing legal opinions and legal memorandums, the changing legislative environment, and the evolving role of the OLLS in the legislative process, the Office established the following written statement of office policies governing legal opinions and legal memorandums.

GP-1. Consultation with interested and affected parties outside the Office about the preparation and delivery of a legal opinion may be imperative. If a legal opinion concerns a bill that has not yet been introduced, it will probably be necessary and will almost invariably be advisable to obtain prior approval from the member requesting the opinion prior to contacting those parties.

[1] A legal opinion is a document prepared by the office that draws a legal conclusion regarding the meaning or legal effect of a constitutional or statutory provision, pending or potential legislation, or case law. In many instances, a legal opinion addresses the constitutionality of pending or potential legislation or a past or potential government action.

[2] A legal memorandum does not draw conclusions like the ones required of a legal opinion and more typically provides an overview of a particular area of law or summarizes statutory or constitutional provisions or a recently decided case.

Explanation of purpose. The purpose of this policy is to require a determination whether an issue has already been addressed by an authoritative source,[3] to put interested and affected parties on notice about the opinion or memo, to help determine the impact of an opinion or memo on the legislative process and on legislative policy, and to avoid surprises.

GP-2. To the extent practicable, legal opinions and legal memorandums should support the constitutionality of enacted law and the plenary legislative power of the General Assembly.

Explanation of purpose. Enacted law is clothed in a presumption of constitutionality. In interpreting the law, courts are bound to avoid constitutional issues and are under a duty to find that a statute is unconstitutional only when the constitutional defect is proven beyond a reasonable doubt.[4] These principles should guide any legal opinion or legal memorandum prepared by this Office.[5]

Bills that enact new law or substantially amend existing law that have been introduced and are under consideration by the General Assembly have not been enacted and do not have the presumption of constitutionality. However, an OLLS legal opinion or legal memorandum relating to such a bill that involves the question whether the General Assembly has the authority to enact such legislation should resolve all doubts in favor of the General Assembly's plenary legislative power.[6]

Bills do not enjoy any presumption of constitutionality in the face of valid legislative procedural objections, such as a bill enacted in violation of the GAVEL amendment or enactment of a revenue-raising bill that did not originate in the House.

Finally, before a bill is introduced and while confidentiality protects the bill, there seems little reason not to tell the sponsor about serious constitutional concerns as long as the above-mentioned presumptions are also discussed.

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[3] An example is the longstanding policy that the Office does not provide an opinion on a procedural issue–such as whether an amendment fits under the title of a bill–when the presiding officer, i.e., chairperson of a committee of reference or the committee of the whole, has already ruled, except with the consent of the person who ruled or at the direction of the Speaker or the President.

[4] *See*, for example, *In Re House Bill No. 1353*, 738 P.2d 371 (Colo. 1987), and Lamm v. Barber, 192 Colo. 511, 565 P.2d 538 (1977).

[5] Because our Office is an instrumentality of the Colorado General Assembly, it is viewed by some as having a degree of responsibility for laws passed by the General Assembly. While enactment of law is and must remain the sole province of the elected legislators, we work for the legislative institution and the legislative institution has responsibility for its acts.

[6] *See*, for example, *Metzger v. People*, 98 Colo. 133, 53 P.2d 1189 (1936).

GP-3. Rules of construction[7] should be employed as much as possible and should be employed in their true context.

Explanation of purpose. Conscientious use of commonly accepted rules of construction adds credibility to the opinion or memorandum and reduces exposure to criticism that an opinion or memorandum is unprincipled. Such rules of construction include, for example:

The "plain meaning" rule - When the intention of the legislature is so apparent from the face of the statute that there can be no question as to its meaning, there is no room for construction.[8]

Construction of an ambiguous statute by administrative officials charged with its enforcement is given deference by the courts.[9]

Construction of an ambiguous statute must attempt to give effect to all parts of the statute and constructions that would render meaningless a part of the statute should be avoided.[10]

[7] To become more familiar with rules of construction, see *Sutherland Statutes and Statutory Construction* and article 4 of title 2, C.R.S.

[8] 2A Singer, *Sutherland Statutes and Statutory Construction*, section 46.01, at 81 (4th ed. 1985). See also *People v. Second Judicial District Court*, 713 P.2d 918 (Colo. 1986).

[9] *Larimer Cty. Sch. Dist. v. Industrial Comm'n*, 727 P.2d 401 (Colo. App. 1986), *cert. denied* 752 P.2d 80 (Colo. 1988).

[10] *People v. Terry*, 791 P.2d 374 (Colo. 1990).

J.2.3 OLLS Policy Concerning Member Requests for Opinions on Legislative Procedure

From time to time a member may ask OLLS staff to analyze and resolve an issue of legislative procedure that arises in the course of legislative deliberations. While the members find our opinions and advice on legislative procedure—whether oral or written—helpful, OLLS staff must observe the following limits and protocol:

1. When the presiding officer, whether the Speaker, the Speaker Pro Tempore, the President, the President Pro Tempore, or the Chair of the Committee of the Whole, makes a final ruling on a question of procedure, that ruling should not be called into question through the mechanism of requesting an opinion from the OLLS on the ruling. The ruling is final and should not be questioned unless a member of the House appeals the decision of the Speaker or the Speaker Pro Tempore pursuant to House Rule 11 (a) or a Senator appeals the decision of the President or the President Pro Tempore pursuant to Senate Rule 6 (a).

2. If a member requests an opinion on a procedural question after the presiding officer has ruled on the question, the OLLS staff person who received the request should advise the requesting member that, in observance of the proper role of nonpartisan staff, it is the policy of the OLLS not to provide an opinion—either orally or in writing—because the presiding officer has already ruled on the question. Thereafter, the staff person should advise their team leader of the request. If the OLLS staff person is not certain whether the presiding officer has ruled on the question, the OLLS staff person should first ask the requesting member whether there has been a ruling. If the presiding officer has not ruled on the procedural question, then the OLLS staff may offer their opinion or advice on the matter.

J.3 Guidelines for Releasing Documents Prepared for Members of the General Assembly

Introduced Versions of Bills and Amendments.

The introduced version of bills and amendments that have been introduced in committee or on the House or Senate floor are public records and can be released at any time pursuant to section 2-3-505 (2)(b), C.R.S. If a determination cannot readily be made that an amendment was introduced, the person requesting the document can be asked to provide additional information or, as time permits, the Office can conduct appropriate research necessary to make a determination.[11] "Engrossed", "reengrossed", "revised", "rerevised", and the "act" versions of bills are also public records and can be released at any time pursuant to section 2-3-505 (2)(b), C.R.S.

Member Files Containing Bill Drafts and Amendments and Attached Materials.

At all times, the drafts of bills and any amendments contained in the member files and any materials attached to them are work product and shall remain confidential pursuant to section 2-3-505 (2)(b), C.R.S., unless the person requesting the file or a specific record in the file obtains the written permission of the applicable member or former member of the General Assembly to release the requested OLLS drafting file or record in the file. The OLLS will provide the last known contact information on file with OLLS to the requester if the member is no longer serving in the General Assembly. If the former member is deceased, the OLLS will not release the applicable OLLS drafting files because the work-product privilege survives the death of the deceased member and no other person can waive that privilege.

Legal Opinions.

A legal opinion can be released if the person requesting it obtains permission from the member or former member who requested the legal opinion or the member or former member has waived the work product privilege (see the subsequent paragraph on waiver or release).

[11] For example, if a person requests **all** amendments prepared for a particular member on a bill, you cannot automatically release the copies in the member file. You would have to determine which of the amendments were actually introduced. Alternatively, you could release all of the amendments if the person obtains permission from the member or if the member has waived confidentiality.

Factual data[12] - Not part of Member Files or Legal Opinions.

The final version of documents containing factual data that are not prepared as a part of a bill or amendment request or as part of a legal opinion are public records pursuant to section 2-3-505 (2)(c), C.R.S.

- The final version of these documents can be released.
- On and after August 6, 1997, a member may request that these documents remain work product pursuant to section 2-3-505 (2)(e), C.R.S.

The Office should generally assume that these documents are prepared for public release. However, if a member makes a request that a document remain work product, the person preparing the document should include the following notice on the first page: THIS DOCUMENT IS WORK PRODUCT PREPARED FOR A MEMBER OF THE GENERAL ASSEMBLY AND IS NOT AVAILABLE FOR PUBLIC RELEASE. If such a statement is not on the face of the document, you may release it.

Any documents containing factual data that are in draft form and not finalized cannot be released without the consent of the member or former member who requested the document.

Waiver or Release.

If a member gives specific permission for release of a document or waives the work product privilege, orally or in writing, or produces or distributes a document in a public meeting, the document can be released.

Assisting Members of the General Assembly.

In situations in which the person making the request for release of a document is a member of the General Assembly or someone acting on behalf of a member, the Office should conduct any necessary research or obtain any necessary permission from other members.

[12] Examples are: Side-by-side comparisons of laws or versions of bills; compilations of existing public information, statistics, or data; or compilations or explanations of general areas or bodies of law, legislative history, or legislative policy.

J.4 OLLS Guidelines for Working with Lobbyists

OLLS Guidelines for Working with Lobbyists

J.5 Legislative Staff: Toward a New Professional Role

by John Phelps

Clerk, Florida House of Representatives

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This article is from remarks which were presented by John Phelps at 1999 meetings of staff sections of the National Conference of State Legislatures.

Over the past few months it has been my pleasure to travel to meetings of the staff sections of the National Conference of State Legislatures (NCSL). These visits have given me some fresh insights into our business. Meeting attendance is at an all-time high and programs are becoming increasingly relevant and valuable. I believe something is building for legislative staff, something important. But before getting to that, let me place it in context.

NCSL was created in 1975, a time when state legislatures were minor players in the fabric of American government. Over the past 30 years there has been a dramatic change. Our legislatures today are increasingly influential at home and in Washington, and our government has begun to return to the state/federal balance intended by its founders.

I believe NCSL is due considerable credit for this transformation. It has worked hard to bring together the resources state legislatures needed to reassert their proper constitutional authority. We are now beginning to see the fruits of that labor.

At the very beginning NCSL recognized that effective legislative staff would be a key to state legislatures realizing their potential. I believe it was at that moment that legislative staff work began taking on the properties of a profession. What are some of these properties?

1. A defined mission serving a critical public purpose;
2. A set of core values;
3. A code of ethics;
4. Self-developed and enforced standards of performance; and
5. Continuing education.

Let me give you an example of how this works in practice.

Those of us in term-limited states have heard for years that staff and lobbyists will soon be running our legislatures. That is nonsense and every legislative staff person knows it. Staff today know where the line is drawn for us. We honor it because doing so conveys respect for the legislature itself and our proper role within it. That doesn't mean we are passive; it just means we know when and under what circumstances to be assertive. It is one of our key professional values. We don't even think about it, we just do it.

Some veteran colleague cared enough to pass along this insight to us. That is what professions do, they pass along their skills and values to the next generation. If we believe our jobs are important enough to do well, then we should be similarly concerned that our successors do them well. If we care about the future of the legislature, we have to care about future legislative staff.

Many of the "old legislative foot soldiers" like me who got in on the early ramping-up of legislative staff are approaching retirement age. It is time for us to acknowledge that much of this work isn't learned at the university. It is learned in the trenches, under fire.

We need to begin devising programs in each of our states so that the young people joining our ranks are given the benefit of our experience and do not become discouraged or overwhelmed. We need to look out for them during those early skirmishes that we know are bound to come.

The first step in this process is to identify their frame of reference. Namely, that new staff know about the legislature what they have been taught by the media. This can be dangerous for them and for us. Dangerous for them because it can threaten their employment, and dangerous for us because when any staff person fails, the credibility of all staff is diminished.

New staff need a more factual perspective. They need to understand a few imperatives.

1. *They need to know that legislatures are made up of many fine and decent people, members, staff, and lobbyists alike* who often look upon what they do with a kind of reverence, as much a commitment as a career.

   This attitude is formed when lawmaking is experienced as a player, in a first-hand, personal way. People so engaged come to realize that for all its complexities and frustrations, there is certain majesty in the democratic process. They come to appreciate that something larger than their narrow interest is at stake. They come to accept the process itself as a thing to be cherished and preserved.

   It would be naïve to say that everyone in the business holds this view, but that so many have over the years is remarkable. More so than constitutions, they have been the foundation on which the legislative institution has been built.

2. *New staff need to know the legislative process is fairer than they have been led to believe, but not perfect;* that conflict over deeply held beliefs always gets personal. Lawmaking is not an Oxford-style debate; it has real consequences for real people. It is

disorderly and there will be an occasional fistfight. But when the dust settles the "process" will right itself as it has done for over 200 years.

3. *They need to know that legislatures do a much better job than the media would admit* and that, for most issues, very responsible policies are developed. Legislatures were never expected to produce perfect laws; they were only expected to achieve the possible within the context of their time.

4. *They need to believe in the power of ideas.* Obviously, influence matters in politics, but so does solid factual analysis. If it didn't a lot of staff would be out of work. We all know that legislatures make their worst decisions when they act with inadequate information. Our job is to see that never happens. They need to know that a good idea is a good idea, even if it comes from a scoundrel. There is, of course, the corollary that a bad idea is still a bad idea even if it comes from a statesman.

5. *They need to know that lawmaking is not about winning or losing, it is about best guesses.* It involves taking the facts at hand and making a decision, in the full knowledge that history will likely judge you wrong. That is how our government was intended to work. It was not founded upon fixed ideas as were so many that failed. It was based instead on the commonsense notion that policies will change when experience requires them to. There is not now nor was there ever intended to be a "final word" in lawmaking. It is the genius of our system.

   Our federal constitution was born in an era when English empiricism was the ascendant philosophy. John Locke, who deeply influenced our founding fathers, was one of its chief proponents. This philosophy rejected the notion that perfection or absolute truth was possible in earthly matters. That is the principle reason powers were balanced among competing branches. The best all of us in government can do is strive for that ambiguous and shifting notion of the collective good.

6. *New staff need to respect a person's right to hold his or her own views.* Lobbyists represent people asserting their constitutional right to petition their government. Neither their motives nor anyone else's should be questioned. Staff should be willing to trust that the merits of every proposal will be fairly judged through the twin cauldrons of analysis and debate.

7. *They need to know that they don't have to be experts in politics.* For most of us, that is not what we were hired to do. That doesn't mean that they should ignore politics. It just means that the politics of our work should not become an obsession.

8. *They need to know that there is a line past which staff do not carry an issue.* It is the point at which they have to hand the ball to a member and let them carry it. It is

necessary to know where that line is drawn and not to step over it. A veteran can help them understand where that line is.

9. *They need to know not to personalize outcomes.* Their ideas will not always prevail. That doesn't mean that they were wrong. It just means that they need to go on to the next issue. They should be inspired by the knowledge that they will one day be able to point with pride to the statute books and say they had a hand in writing some of those laws.

10. *They need to know that the votes are not always as certain as one may think.* It is now a truism that special interests control every action of the legislatures. I don't believe it. I think every staff person has seen powerful interests faced down and defeated by the simple testimony of an ordinary citizen. That is how the system is supposed to work.

11. *They need to respect the process.* It is more important than any bill or any member. All of us are asked how to get around this or that rule or procedure. Usually, there is a way within the rules to address the problem; the questioner simply isn't aware of it. If it is plainly against procedure, we should say so and let that be the end of it.

12. *We should encourage new staff to take pride in what they do* - not just because it is right, but because one day a person affected by a law will be grateful someone took the time to do a good job crafting it, even though they may never know who that drafter was.

13. *New staff need to be prepared for the fact that they will not be trusted immediately.* They should not become discouraged when their advice or recommendations are not accepted immediately. They have not failed. It just takes time in this business to build relationships and establish a reputation for good work.

14. *They need to be encouraged to speak up for the legislature,* not to be silent when it is maligned. As "insiders" they have a special knowledge of how our system works. That knowledge carries with it a special responsibility to speak up for the legislative institution. They need to understand that what they say - good or bad - about the legislature has real impact. They just need to tell the truth. A democracy can handle that.

In conclusion, I would like to make one final observation. We talk a lot about the "Legislative Institution." But what exactly do we mean?

I do not believe the legislative institution is bricks and mortar or some rarefied abstraction. To me it is very real and wherever we do our work it surrounds us like the grandeur of our legislative halls.

- It is you and the person in the office next to you.
- It is the honor we pay our rules and traditions.

- It is the courtesy and deference we pay members and one another.
- It is preserving our historic chambers and keeping them safe.
- It is the legacy of our special ceremonies and language.
- It is a well-written bill or report.
- It is the record kept and verified with such care that it is beyond legal challenge.
- It is research so vital when the time comes to vote.
- It is NCSL and its extraordinary staff.

It is these and many other things, but most of all, it is the love that each of us holds for this precious gift of democracy and the understanding that our work and our conduct has real consequences for its future.

Over the past thirty years, with increasing and impressive competence, colleagues in NCSL staff sections have built a profession, a profession that is now an important pillar upholding the legislative institution and facilitating its work within a modern republic. It is an obligation we bear with humility and with pride.

When our work is done and we have kept faith with that responsibility, we can take satisfaction in the knowledge that our legislatures, our states, and our nation have been made stronger.

Appendix K: Sample Effective Date Clauses

Note: It is a good practice, whenever possible, to list the C.R.S. provision(s) with the bill section number(s) in an effective date clause. Such as, "Section 25-7-104.5, Colorado Revised Statutes, enacted/amended in section 1 of this act, takes effect ... " rather than "section 1 of this act takes effect."

K.1 Common Effective Date Clauses with Safety Clauses

K.1.1 Standard Effective Date Clauses

K.1.1.1 Effective on Specified Date

SECTION #. Effective date. This act takes effect July 1, 2012.

K.1.1.2 Effective on Passage with Applicability

SECTION #. Effective date - applicability. This act takes effect upon passage and applies to elections that are conducted on or after the effective date of this act.

K.1.1.3 Effective on Specified Date with Applicability

SECTION #. Effective date - applicability. This act takes effect July 1, 2024, and applies to communications distributed on or after said date.

K.1.2 Multiple Effective Dates

K.1.2.1 Bill Containing Sections That Take Effect at Different Times

SECTION #. Effective date. This act takes effect upon passage; except that section 30-20-1403 (2.5), Colorado Revised Statutes, as added in section 3 of this act, takes effect on July 1, 2025; section 30-20-1404, Colorado Revised Statutes, as amended in section 4 of this act, takes effect on July 1, 2025; section 30-20-1405, Colorado Revised Statutes, as amended in section 5 of this act, takes

effect on July 1, 2025; section 30-20-1405.5, as added in section 6 of this act, takes effect on July 1, 2025; and section 30-20-1418, as added in section 8 of this act, takes effect on July 1, 2025.

K.1.2.2 Provision Within a Section Takes Effect at a Different Time

SECTION #. Effective date. This act takes effect July 1, 2011; except that section 3-3-112.3, Colorado Revised Statutes, as enacted/amended in section 1 of this act, takes effect July 1, 2012.

K.1.3 Contingency Effective Date

K.1.3.1 Bill Effective Only If Another Bill Becomes Law

SECTION #. Effective date. This act takes effect upon passage only if House Bill 10-1233 becomes law, in which case this act takes effect on the effective date of this act or House Bill 10-1233, whichever is later.

K.1.3.2 Portions of Bill Effective Only If Another Bill Becomes Law

SECTION #. Effective date. This act takes effect July 1, 2011; except that sections 7 to 10 of this act take effect only if House Bill 11-1102 becomes law, in which case sections 7 to 10 take effect on the effective date of this act or House Bill 10-1102, whichever is later.

SECTION #. Effective date. This act takes effect upon passage; except that sections 10 to 14 and 19 of this act take effect only if House Bill 10-1357 becomes law, in which case sections 10 to 14 and 19 take effect on the effective date of this act or House Bill 10-1357, whichever is later.

K.1.3.3 Provision of Section Contingent on Another Bill Passing

SECTION #. Effective date. This act takes effect upon passage; except that section 24-1-1207 (6)(b)(VII), Colorado Revised Statutes, as enacted/amended in section 4 of this act, takes effect only if Senate Bill 11-204 becomes law, in which case section 24-1-1207 (6)(b)(VII) takes effect on the effective date of this act or Senate Bill 11-204, whichever is later.

K.1.3.4 Bill Effective Only If Another Bill Does Not Become Law

SECTION #. Effective date. This act takes effect upon passage only if House Bill 10-1072 does not become law.

K.1.4 Multiple Effective Dates and Contingency Effective Date

K.1.4.1 Portion of Bill Effective Only If Another Bill Becomes Law

SECTION #. Effective date. (1) Except as otherwise provided in this section, this act takes effect July 1, 2011.

(2) Sections 9, 10, and 11 of this act take effect January 1, 2012.

(3) Section 25-7-104.5, Colorado Revised Statutes, as enacted in section 1 of this act, takes effect only if Senate Bill 11-124 becomes law, in which case section 25-7-104.5 takes effect on the effective date of this act or Senate Bill 11-124, whichever is later.

K.1.4.2 Portion of Bill Effective Only If Another Bill Does Not Become Law

SECTION #. Effective date. (1) Except as otherwise provided in this section, this act takes effect upon passage.

(2) Section 4 of this act takes effect July 1, 2010.

(3) Section 24-51-401 (1), Colorado Revised Statutes, as amended in said section 4 of this act, takes effect only if House Bill 10-1233 does not become law.

Note: Remember the effective date and safety clause must take effect on the earliest date.

K.1.5 Contingent upon an Amendment Being Adopted at General Election

K.1.5.1 General Election

SECTION #. Effective date. This act takes effect only if Proposition 103 is approved by the people at the next general election and becomes law, and, in such case, this act takes effect on the date of the official declaration of the vote thereon by the governor.

K.1.5.2 Odd-year TABOR Election

SECTION #. Effective date - applicability. (1) Except as otherwise provided in subsection (2) of this section, this act takes effect upon passage.

(2) (a) Sections 2 and 3 of this act take effect only if, at the November 2013 statewide election, a majority of voters approve an initiated or referred measure that allows the state to retain and spend state revenues in excess of the constitutional limitation on state fiscal year spending specified in section 20 (7)(a) of article X of the state constitution or authorizes a revenue change in accordance

with section 20 (7)(d) of article X of the state constitution in a manner that provides additional revenue for expenditure by the state.

(b) If the voters at the November 2013 statewide election approve a measure described in subsection (2)(a) of this section, then sections 2 and 3 of this act take effect on the date of the official declaration of the vote thereon by the governor and apply to __ on and after said date.

K.1.6 Applicability Clauses

The following examples can stand alone as an applicability clause or be included with an effective date or an act subject to petition ASP clause as a subsection (2):

K.1.6.1 With a Safety Clause

This act applies to __ (insert actions - e.g., "offenses committed") on or after the effective date of this act.

K.1.6.2 With an ASP Clause

This act applies to __ (insert actions - e.g., "offenses committed") on or after the applicable effective date of this act.

Note: Use this clause when using an ASP clause since the applicable effective date may be in August, a date specified in the ASP clause, or the date of the official declaration by the governor.

K.1.6.2.1 ASP with Applicability - Conduct Occurring

SECTION #. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the effective date of this act.

K.1.6.2.2 ASP with Applicability - Complaints Filed

SECTION #. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an

item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to municipal campaign finance complaints filed on or after the applicable effective date of this act.

K.1.6.2.3 ASP with Applicability - Budget Requests Made

SECTION #. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to budget requests, requests for supplemental appropriations, and budget request amendments made on or after the applicable effective date of this act.

K.1.6.2.4 ASP with Applicability - Documents Filed

SECTION #. Act subject to petition - effective date - applicability. (1) This act takes effect July 1, 2025; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect July 1, 2025, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

(2) This act applies to documents filed or recorded on or after the applicable effective date of this act.

K.1.6.2.5 ASP with Applicability - Appointments

SECTION #. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by

the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to appointments to the suicide prevention commission made on or after the applicable effective date of this act.

K.1.6.2.6 ASP with Applicability - Offenses Committed and Claims Filed

SECTION #. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to offenses committed and claims filed on or after the applicable effective date of this act.

K.2 Acts Subject to Petition (ASP Clauses)

Add contingency, applicability, etc. as a subsection (2) to any of the following ASPs.

K.2.1 Standard ASP Clause

SECTION #. Act subject to petition - effective date. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November #### and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Note: Use this clause when nothing in the bill requires an effective date prior to the 91st day following the end of a legislative session.

K.2.2 Effective Date Between 91st Day and December of the Next General Election Year

> **SECTION #. Act subject to petition - effective date.** This act takes effect __ (insert a fixed date); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2012 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Note: Use this clause when nothing in the bill requires an effective date prior to the 91st day following the end of a legislative session.

K.2.3 Effective Date in December or January Following the Next General Election

> **SECTION #. Act subject to petition - effective date.** This act takes effect __ (insert a fixed date); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Note: Use this clause when nothing in the bill requires an effective date prior to the December of the next general election year following the end of a legislative session.

K.2.4 Effective Date After January Following the Next General Election

> **SECTION #. Act subject to petition - effective date.** This act takes effect __ (insert a fixed date); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect __ (insert a fixed date).

Note: Use this example when the effective date is beyond the next general election (even numbered year). There is no need to include the "or on the date of the official declaration of vote thereon by the governor, whichever is later" language.

K.2.5 Portions Effective a Year or More After the Current Legislative Session but Before Next General Election

The following sample is written from the perspective of the 2024 session:

SECTION #. Act subject to petition - effective date. Sections 2 and 3 of this act take effect April 1, 2012, and the remainder of this act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2012 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

K.2.6 Portions Effective a Year or More After the Current Legislative Session and After the Next General Election

SECTION #. Act subject to petition - effective date. Sections 4 and 5 of this act take effect July 1, 2013, and the remainder of this act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 7, 2012, if adjournment sine die is on May 9, 2012); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2012 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor; except that sections 4 and 5 of this act takes effect July 1, 2013.

Appendix L: Bills With Relocated Provisions

L.1 Introduction

When adding or amending a provision by relocating existing statutory provisions to a new location, use the following methods to show how the original law appeared:

- Include the old section number of the relocated provision in brackets, preceded by the word "Formerly": **[Formerly 24-36-201]**. Placement of the "Formerly" information depends on what portion of the new provision is taken from the former location.
    - If a "Formerly" section/subsection number applies to the entire section, place the bracketed material after the new section number and before the headnote.
    - If a "Formerly" section/subsection number applies to one subsection, paragraph, subparagraph, or sub-subparagraph, place the bracketed material after the new subsection, paragraph, subparagraph, or sub-subparagraph number as appropriate.
    - For the correct coding around the **[Formerly]** language, see the LE Manual.
- Since the relocated provision is new in the location where it has been moved, no provisions should appear in the C.R.S. as repealed:
    - Any provisions that are already repealed or deleted by amendment in current law should be removed by showing them in strike type in the new location, along with their statutory designation, and renumber or reletter subsequent subdivisions:

        ~~(b) Repealed.~~
    - When repealing relocated language, strike everything, including the subdivision number, and renumber or reletter succeeding subdivisions:

        ~~(10) This section is repealed, December 31, 2027.~~
    - When renumbering or relettering, show old subsection numbers, paragraph letters, etc. in stricken type, followed by the new number or letter:

~~(2)~~ (b) Any person issued a retired status certificate of certified public accountant may be styled and known as a "retired certified public accountant" or "retired C.P.A."

- Since the relocated provision is new in the location where it has been moved, no subdivisions should be numbered with decimal points, so renumber or reletter section subdivisions when relocating a section to eliminate any decimal points:

  ~~(2.5)~~ (3) For purposes of ...

- Note that renumbering and relettering is not the same as relocating unless you are changing the order of the subdivisions, so if you are only renumbering or relettering subdivisions, it is not necessary to use a relocated provisions amending clause.

When relocating a section, part, article, or title, not only is it shown in the new location, but it must also be repealed in the old location. One of the main reasons for repealing the provision in its old location is to alert the Pub team to remove the language in the old location during publications. The easiest way to repeal the relocated section, part, article, or title is to use one of the special straight repeal clauses for the repeal of relocated provisions:

- If the entire section, part, article, or title is being relocated, use the repeal clause that specifies "**repeal of relocated provisions in this act**" and specify the section, part, article, or title that is repealed.

- If portions of a part, article, or title are being relocated, and the remaining portions are just being repealed, use the repeal clause that specifies "**repeal of relocated and nonrelocated provisions in this act**" and specify the part, article, or title that is being repealed. This repeal clause includes language that specifies which of the provisions are only being repealed and not relocated.

- When relocating a section:

  - Relocate the section in its entirety and show any subdivisions that are no longer needed in strike type in the new location to repeal them. A repeal of relocated provisions repeal clause is also needed to repeal the section in its old location.

  - Relocate only the subdivisions that are needed and list the remaining subdivisions in the repeal clause as nonrelocated provisions. Use a repeal of relocated and nonrelocated provisions repeal clause in order to separately list the nonrelocated provisions.

  - Relocate parts of a section to different sections by showing the subdivision number in the "Formerly" information. If the intent is to relocate or repeal the entire section, be sure that all subdivisions are accounted for. Use a repeal of

relocated provisions or a repeal of relocated and nonrelocated provision repeal to repeal them from their current location.

- If a section consists of only one paragraph and the drafter wishes to divide it up and relocate it to different sections, it should be relocated to only one new section. The language that the drafter wishes to move to another section should be shown in strike type in the relocated section and in small capitals in the second section.

- A provision can be relocated with or without amendments. See the amending clause examples in Appendix B. A provision that is relocated without amendments should not have any changes in it other than the section number or subdivision number that is being relocated. If any conforming amendments are needed within the relocated provision as a result of the relocation, “amended” is needed in the amending clause

- If a bill with relocated provisions becomes law, the drafter should create a comparative table showing the old and new locations of relocated provisions. The table will be published at the back of the index to aid in historical research.

For additional examples, see HB23-1026 and HB20-1286.

L.2 Relocating an Entire Section to a New Section

When relocating an entire section to a new section, and the new section consists only of the single relocated section, insert the word "Formerly" and the old section number in brackets before the headnote. This will indicate that the entire section, exclusive of any new language, was formerly the old section.

> **SECTION 17.** In Colorado Revised Statutes, **add with amended and relocated provisions** 12-255-118.5 as follows:
>
> **12-255-118.5. [Formerly 12-260-109] Approved nurse aide training programs.** (1) Except for any medical facility or program that has been explicitly disapproved by the department of public health and environment, the board may approve any nurse aide training program offered by or held in a medical facility or offered and held outside a medical facility. Approval by the board ~~shall be~~ IS SUFFICIENT to authorize and permit the operation of the training program.
>
> (2) The curriculum content for nurse aide training must include material that will provide a basic level of both knowledge and demonstrable skills for each individual completing the program and be presented in a manner that will take into consideration individuals with limited literacy skills. The curriculum content

must include needs of populations that may be served by an individual medical facility.

(3) The CURRICULUM MUST INCLUDE THE following topics: ~~shall be included in the curriculum:~~

(a) Communication and interpersonal skills;

(b) Infection control;

(c) Safety and emergency procedures;

(d) Promoting residents' and patients' independence;

(e) Respecting residents' and patients' rights.

(4) The training program shall be designed to enable participants to develop and demonstrate competency in the following areas:

(a) Basic nursing skills;

(b) Personal care skills;

(c) Recognition of mental health and social services needs;

(d) Basic restorative services;

(e) Resident or patient rights.

(5) The board or its designee shall inspect and survey each nurse aide training program it approves during the first year following approval and every two years thereafter. The inspection or survey may be made in conjunction with surveys of medical facilities conducted by the department of public health and environment.

(6) The board may require a nurse aide training program to include up to twenty-five percent more hours than the minimum requirements established in the federal "Omnibus Budget Reconciliation Act of 1987", as amended, Pub.L. 100-203, 101 Stat. 1330. Any additional training hours shall be within the subject areas required by federal law.

SECTION 18. Repeal of relocated provisions in this act. In Colorado Revised Statutes, repeal 12-260-109.

L.3 Relocate an Entire Section to an Existing Section

When relocating a section to another, existing, section, insert the word "Formerly" and the old section number in brackets after the subdivision number or letter where the relocated provision is being added. The existing provision may require renumbering or relettering to add the relocated provisions, as shown below in subsection (1).

This example demonstrates:

- Where to place the “Formerly” information when a relocated provision is added into an existing section
- How to show the renumbering changes to the subdivisions in the existing section [subsection (1)]
- How to show the renumbering changes to the relocated section [subsection (2)]
    - Subsection (2) contains the relocated former section 12-2-122.5. Since it is being added to an existing section, the renumbering of the subsections needs to be shown in brackets rather than in strike type. Insert the bracketed "Formerly" information with the original section number and subsection number after the new paragraph letter to indicate their new location.

To compare this example to the incorrect method of renumbering, see section 5 of SB19-155.

Be sure to repeal any relocated provisions with a special repeal clause.

> **SECTION 5.** In Colorado Revised Statutes, **amend with amended and relocated provisions** 12-2-115.5 as follows:
>
> **12-2-115.5. Status - retired - inactive.** (1) **Retired status.** (a) Any person who has received from the board and holds a certificate of certified public accountant, including an expired certificate of certified public accountant that remains subject to renewal, reactivation, or reinstatement, may apply to the board for retired status. The board may grant ~~such~~ RETIRED status by issuing a retired status certificate of certified public accountant to any person who meets established conditions prescribed by the board.
>
> ~~(2)~~ (b) Any person issued a retired status certificate of certified public accountant may be styled and known as a "retired certified public accountant" or "retired C.P.A."
>
> ~~(3)~~ (c) During ~~such~~ THE time ~~as~~ a certified public accountant remains in a retired status, ~~such~~ THE person shall not perform those acts set forth in section 12-2-120 (6)(a) and (6)(b). The board ~~shall retain~~ RETAINS jurisdiction over retired status certified public accountants.

(2) **Inactive status.** (a) **[Formerly 12-2-122.5 (1)]** The holder of a certificate of certified public accountant, upon ~~written~~ notice ~~by first-class mail~~ to the board IN ANY FORM OR MANNER DESIGNATED by the board, shall have ~~his or her~~ THE HOLDER'S name transferred to an inactive list and shall not be required to comply with the continuing education requirements for certificate renewal pursuant to section 12-2-119 so long as ~~he or she~~ THE HOLDER remains inactive. Each inactive certificant shall register in the same manner as active certificate holders and pay a fee pursuant to section 12-2-108 (3). ~~At such time as an inactive certificant wishes~~ To resume the practice of public accounting as a certified public accountant, ~~he or she shall~~ THE HOLDER must file an application, ~~therefor,~~ meet any education requirements imposed by the board, and pay a fee as established by the director of the division of professions and occupations within the department of regulatory agencies.

(b) **[Formerly 12-2-122.5 (2)]** During ~~such~~ THE time as a certified public accountant remains in an inactive status, the certified public accountant shall not perform those acts restricted to active certified public accountants pursuant to section 12-2-120 (6)(a). The board ~~shall retain~~ RETAINS jurisdiction over inactive certified public accountants for the purposes of disciplinary action pursuant to section 12-2-123.

SECTION 11. Repeal of relocated provisions in this act. In Colorado Revised Statutes, repeal 12-2-122.5.

L.4 Relocate Part of a Section to a New Section

When relocating a section subdivision to a new section, insert the bracketed "Formerly" with the old section number and any subsection number before the headnote. This indicates that the entire section consists of what is shown in the bracketed material.

In the example below, section 7-111-105 (1) is being relocated, so all of subsection (1) is shown in the new section, but paragraphs (d) and (e) were already repealed, so they are shown in strike type in the new section, including the paragraph letters themselves.

SECTION 12. In Colorado Revised Statutes, **add with amended and relocated provisions** 7-90-203.8 as follows:

7-90-203.8. [Formerly 7-111-105 (1)] Statement of owner's interest exchange. (1) After a plan of ~~share~~ exchange is approved ~~by the shareholders~~ PURSUANT TO SECTION 7-90-203.4, the acquiring ~~corporation~~ ENTITY shall deliver to the secretary of state, for filing pursuant to part 3 of this article 90, ~~of this title,~~ a statement of ~~share~~ OWNER'S INTEREST exchange stating:

(a) The entity name of each ~~corporation,~~ ENTITY whose ~~shares~~ OWNERS' INTERESTS will be acquired, and the principal office address of its principal office;

(b) The entity name of the acquiring ~~corporation,~~ ENTITY and the principal office address of its principal office; and

(c) A statement that the acquiring ~~corporation~~ ENTITY acquires shares of the other ~~corporations~~ ENTITY OR ENTITIES.

~~(d) and (e) (Deleted by amendment, L. 2004, p. 1503, § 275, effective July 1, 2004.)~~

SECTION 13. Repeal of relocated provisions in this act. In Colorado Revised Statutes, repeal 7-111-105 (1).

L.5 Amend an Existing Part with Relocated Provisions

An entire part can be amended with relocated provisions and remain in the same part.

In the example below, part 4 is amended with relocated provisions. New sections are added between existing sections and existing sections are "relocated" as new section numbers. Section 7-108-401 is not relocated and remains section 7-108-401, but provisions within the section are repealed and others are renumbered.

SECTION 35. In Colorado Revised Statutes, **amend with relocated provisions** part 4 of article 108 of title 7 as follows:

PART 4
STANDARDS OF CONDUCT

7-108-401. General standards of conduct for directors and officers. (1) Each director shall discharge the director's duties as a director, including the director's duties as a member of a committee, and each officer with discretionary authority shall discharge the officer's duties under that authority:

(a) In good faith;

(b) With ~~the~~ care; ~~an ordinarily prudent person in a like position would exercise under similar circumstances;~~ and

(c) In a manner the director or officer reasonably believes to be in the best interests of the corporation.

(2) In discharging duties UNDER THIS SECTION, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director or officer reasonably believes to be reliable and competent ~~in the matters presented~~ WITH RESPECT TO THE INFORMATION, OPINIONS, REPORTS, OR STATEMENTS;

(b) ONE OR MORE legal counsel, ~~a public accountant, or another person~~ ACCOUNTANTS, OR OTHER PERSONS RETAINED BY THE CORPORATION as to matters INVOLVING EXPERTISE OR SKILLS the director or officer reasonably believes are within ~~such~~ THE person's professional or expert competence; ~~or~~

(c) In the case of a director, a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence; OR

(d) IN THE CASE OF AN OFFICER, THE BOARD OF DIRECTORS OR ANY COMMITTEE OF THE BOARD OF DIRECTORS.

(3) A director or officer ~~is not acting in good faith~~ MAY NOT RELY ON INFORMATION, OPINION, REPORTS, OR STATEMENTS AS PERMITTED BY SUBSECTION (2) OF THIS SECTION if the director or officer has knowledge concerning the matter in question that makes THE reliance ~~otherwise permitted by subsection (2) of this section~~ unwarranted.

~~(4) A director or officer is not liable as such to the corporation or its shareholders for any action the director or officer takes or omits to take as a director or officer, as the case may be, if, in connection with such action or omission, the director or officer performed the duties of the position in compliance with this section.~~

~~(5)~~ (4) A director or officer of a corporation, in the performance of duties in that capacity, ~~shall~~ DOES not have any fiduciary duty to any creditor of the corporation arising only from the status as a creditor, WHETHER THE CORPORATION IS SOLVENT OR INSOLVENT.

7-108-402. Standards of liabilities for directors. (1) A DIRECTOR IS LIABLE, AS A DIRECTOR, TO THE CORPORATION OR TO ITS SHAREHOLDERS FOR MONEY DAMAGES OR OTHER MONEY PAYMENT FOR ANY ACT, OMISSION TO ACT, OR DECISION ONLY IF THE PARTY ASSERTING LIABILITY ESTABLISHES IN A PROCEEDING THAT THE CHALLENGED ACT, OMISSION, OR DECISION:

(a) WAS NOT IN GOOD FAITH;

(b) WAS ONE THAT THE DIRECTOR DID NOT RATIONALLY BELIEVE TO BE IN THE BEST INTERESTS OF THE CORPORATION;

{Portions of the bill have been deleted to save space}

(f) SUBJECT TO SECTION 7-108-501, WAS A BREACH OF THE DIRECTOR'S DUTY OF LOYALTY TO THE CORPORATION, INCLUDING BY DIRECTLY OR INDIRECTLY RECEIVING AN IMPROPER PERSONAL BENEFIT; OR

(g) CONSISTED OF OR RESULTED FROM A VOTE OR ASSENT SPECIFIED IN SECTION 7-108-405.

{Portions of the bill have been deleted to save space}

(3) A DIRECTOR LIABLE UNDER THIS SECTION FOR MONEY DAMAGES OR FOR OTHER MONEY PAYMENT MAY OFFSET AGAINST THE LIABILITY ANY GAIN TO THE CORPORATION THAT THE DIRECTOR ESTABLISHES AROSE OUT OF THE SAME TRANSACTION, UNLESS THE OFFSET IS AGAINST PUBLIC POLICY.

7-108-403. [Formerly 7-108-402] Limitation of certain liabilities of directors and officers. ~~(1) If so provided in the articles of incorporation, the corporation shall eliminate or limit the personal liability of a director to the corporation or to its shareholders for monetary damages for breach of fiduciary duty as a director; except that any such provision shall not eliminate or limit the liability of a director to the corporation or to its shareholders for monetary damages for any breach of the director's duty of loyalty to the corporation or to its shareholders, acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, acts specified in section 7-108-403, or any transaction from which the director directly or indirectly derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director to the corporation or to its shareholders for monetary damages for any act or omission occurring before the date when such provision becomes effective.~~

~~(2) No~~ A director or officer ~~shall be~~ IS NOT personally liable for any injury to person or property arising out of a tort committed by an employee unless ~~such~~ THE director or officer was personally involved in the situation giving rise to the litigation or unless ~~such~~ THE director or officer committed a criminal offense in connection with ~~such~~ THE situation. The protection afforded in this ~~subsection (2) shall~~ SECTION DOES not restrict other common-law protections and rights that a director or officer may have. ~~This subsection (2) shall not restrict the corporation's right to eliminate or limit the personal liability of a director to the corporation or to~~

~~its shareholders for monetary damages for breach of fiduciary duty as a director as provided in subsection (1) of this section.~~

7-108-404. Limitation of certain remedies - definition. (1) AN ACTION BY THE CORPORATION OR BY THE BOARD OF DIRECTORS IS NOT VOID OR VOIDABLE, AND SHALL NOT BE ENJOINED OR SET ASIDE IN A PROCEEDING BY A SHAREHOLDER OR BY OR IN THE RIGHT OF THE CORPORATION, BECAUSE ONE OR MORE PRECLUDED DIRECTORS WAS PRESENT AT OR PARTICIPATED IN THE MEETING OF THE BOARD OF DIRECTORS AT WHICH THE ACTION WAS AUTHORIZED, APPROVED, OR RATIFIED, OR EXECUTED A CONSENT FOR THE ACTION IN THE MANNER PROVIDED IN SECTION 7-108-202, IF THE ACTION WAS AUTHORIZED, APPROVED, OR RATIFIED:

(a) AT A MEETING, BY THE AFFIRMATIVE VOTE OF THE NUMBER OF DIRECTORS PRESENT AT THE MEETING THAT WOULD BE SUFFICIENT TO TAKE ACTION AT THE MEETING UNDER ARTICLES 101 TO 117 OF THIS TITLE 7 OR THE BYLAWS; EXCEPT THAT, IN DETERMINING HOW MANY VOTES WOULD BE SUFFICIENT, THE VOTE OF A PRECLUDED DIRECTOR IS NOT COUNTED FOR PURPOSES OF AUTHORIZING THE ACTION BUT THE DIRECTOR IS CONSIDERED PRESENT FOR PURPOSES OF DETERMINING A QUORUM; OR

(b) WITHOUT A MEETING BY WRITTEN CONSENT PURSUANT TO SECTION 7-108-202 AND EXECUTED BY ALL OF THE DIRECTORS, IF THE NUMBER OF DIRECTORS, NOT INCLUDING ANY PRECLUDED DIRECTOR, CONSTITUTES NOT LESS THAN A MAJORITY OF ALL OF THE DIRECTORS OR SUCH GREATER NUMBER OF DIRECTORS AS IS REQUIRED BY ARTICLES 101 TO 117 OF THIS TITLE 7 OR THE BYLAWS.

(2) AS USED IN THIS SECTION, "PRECLUDED DIRECTOR" MEANS A DIRECTOR WHO VIOLATED ONE OR MORE OF THE STANDARDS OF LIABILITY SET FORTH IN SECTION 7-108-402 (1) WITH RESPECT TO AN ACTION DESCRIBED IN SUBSECTION (1) OF THIS SECTION.

7-108-405. [Formerly 7-108-403] Liability of directors for unlawful distributions. (1) A director who votes for or assents to a distribution made in violation of section 7-106-401 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating said section 7-106-401 or the articles of incorporation if it is established that the director did not perform the director's duties in compliance with section 7-108-401. In any proceeding commenced under this section, a director ~~shall have~~ HAS all of the defenses ordinarily available to a director.

(2) A director held liable under subsection (1) of this section for an unlawful distribution is entitled to contribution:

(a) From every other director who could be held liable under subsection (1) of this section for the unlawful distribution; and

(b) From each shareholder who accepted the distribution knowing the distribution was made in violation of section 7-106-401 or the articles of incorporation, the amount of the contribution from ~~such~~ THE shareholder being the amount of the distribution to that shareholder that exceeds what could have been distributed to that shareholder without violating said section 7-106-401 or the articles of incorporation.

SECTION 70. Repeal of relocated provisions in this act. In Colorado Revised Statutes, repeal 7-108-402.

L.6 Add a New Part with Relocated Provisions

When relocating an existing part to a new part, it may be relocated within the same article or title or to a different article or title.

A new part can contain both new and relocated material. Show new material in small capitals and show relocated material in regular type.

L.6.1 Adding a New Part With Relocated Provisions and Repealing Relocated Subdivisions

In the example below, part 2 of article 36 is relocated within the same title as a new part 6 in article 48.5.

This example demonstrates:

- The correct place to insert the "Formerly" information when an entire section is relocated to a new section
- How to repeal a subdivision that has been relocated
- How to add to the new part a new section that does not contain relocated material

SECTION 1. In Colorado Revised Statutes, **add with amended and relocated provisions** part 6 of article 48.5 of title 24 as follows:

PART 6
COLORADO LOANS FOR INCREASING MAIN STREET
BUSINESS ECONOMIC RESILIENCY ACT

24-48.5-601. [Formerly 24-36-201] Short title. The short title of this ~~part 2~~ PART 6 is the "Colorado Loans for Increasing Main Street Business Economic ~~Recovery~~ RESILIENCY Act" or "CLIMBER Act".

24-48.5-602. [Formerly 24-36-202] Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) There are nearly one hundred forty thousand small businesses with employees in Colorado;

(b) Small businesses in Colorado make up a disproportionately larger share of the economy of the state compared to the United States as a whole;

{Portions of the bill have been deleted to save space}

(k) The state will rely on those lending institutions as essential partners in a small business recovery loan program; and

(l) Authorizing the creation of a small business recovery AND RESILIENCY loan program seeded by money provided by the state will support Colorado small businesses affected by the COVID-19 crisis, ~~and~~ assist in the overall economic recovery of the state, AND SUPPORT RESILIENCY FOR SMALL BUSINESSES AS NEW CHALLENGES EMERGE.

(2) The general assembly further finds and declares that:

(a) While the loan program authorized by this ~~part 2~~ PART 6 will be predominately capitalized by private sector investments, the limited use of state money obtained through the sale of insurance premium tax credits that will result in future state tax expenditures incurred for the purpose of supporting the program will, under the current economic conditions, result in the formation of more private capital at better terms for small business borrowers than would otherwise be available;

(b) The loan program, if successful, has the potential to help small businesses survive the crisis caused by THE COVID-19 pandemic, ~~and to~~ protect jobs across the state, AND SUPPORT RESILIENCY FOR SMALL BUSINESSES AS NEW CHALLENGES EMERGE, which in turn will generate and sustain tax revenues to both the state and local governments;

(c) Preserving jobs with small businesses will also reduce public expenditures on safety net programs and other forms of assistance needed by those who have become unemployed as a result of the crisis caused by COVID-19;

(d) The state money contributed to the loan program therefore serves an important and discrete public purpose in securing the state's economic and overall recovery from the crisis caused by COVID-19 AND IN ENSURING THE STATE'S RESILIENCY AMONG SMALL BUSINESSES AS NEW CHALLENGES EMERGE; and

(e) Supporting the state's recovery from the crisis caused by COVID-19 AND ENSURING THE STATE'S RESILIENCY AMONG SMALL BUSINESSES AS NEW CHALLENGES EMERGE is the primary purpose of the loan program and outweighs any benefit to private individuals or entities.

(3) The general assembly further finds and declares that:

(a) The insurance premium tax credits authorized by this ~~part 2~~ PART 6 as a method to provide money to the loan program are available only to insurance companies that incur premium tax liability in the state;

(b) The tax credits can only be used by an insurance company to offset tax liability actually incurred by the insurance company;

(c) The tax credits are not refundable and do not impose an obligation of payment in any future year upon the state;

(d) The use of proceeds from the sale of insurance premium tax credits to seed the loan program allows the state to accomplish this important public purpose through the use of future tax expenditures and therefore:

(I) Does not require the state to borrow money, extend or pledge the state's credit, or obligate the state to make future payments from state revenues; and

(II) Does not otherwise create any multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever for purposes of section 20 (4)(a) of article X of the state constitution.

24-48.5-603. [Formerly 24-36-203] Definitions. As used in this part 2 part 6, unless the context otherwise requires:

(1) "Colorado credit reserve" means the Colorado credit reserve program described in section 24-46-104 (1)(n).

(2) "Contract" means a contract entered into by the ~~state treasurer~~ OFFICE OF ECONOMIC DEVELOPMENT in accordance with ~~section 24-36-205 (1)~~ SECTION 24-48.5-605 (1).

(3) "Department" means the department of the treasury.

(4) "Eligible borrower" means a business that, as determined by the oversight board:

(a) Has its principal place of business in the state;

(b) Has at least one but fewer than one hundred employees;

(c) Can demonstrate that it had at least one year of positive cash flow as determined by the oversight board; and

(d) Can demonstrate that it has a current debt-service coverage ratio of at least one-to-one or a higher level as determined by the oversight board.

(5) "Loan program" means ~~a~~ THE small business recovery AND RESILIENCY loan program established in accordance with ~~section 24-36-205~~ SECTION 24-48.5-605.

(6) "Loan program manager" means an entity the ~~state treasurer~~ OFFICE OF ECONOMIC DEVELOPMENT contracts with to establish and administer the loan program in accordance with ~~section 24-36-205 (2)~~ SECTION 24-48.5-605 (2).

(7) "Office" ~~of economic development~~ means the Colorado office of economic development created in section 24-48.5-101.

(8) "Oversight board" means the small business recovery AND RESILIENCY loan program oversight board created in ~~section 24-36-204~~ SECTION 24-48.5-604.

(9) "Premium tax liability" means the liability imposed by section 10-3-209 or 10-6-128, or, in the case of a repeal or reduction by the state of the liability imposed by section 10-3-209 or 10-6-128, any other tax liability imposed upon an insurance company by the state.

(10) "Qualified taxpayer" means an insurance company authorized to do business in Colorado that has premium tax liability owing to the state and that purchases a tax credit under this ~~part 2~~ PART 6. "Qualified taxpayer" also includes an insurance company that receives or assumes a tax credit transferred in accordance with ~~section 24-36-206 (7)(e) or 24-36-207 (6),~~ SECTION 24-48.5-606 (7)(e) OR 24-48.5-607 (6), or that receives or assumes a tax credit as an affiliate of a qualified taxpayer or transferee. For purposes of this ~~subsection (10)~~ PART 6, "affiliate" has the same meaning as set forth in section 10-3-801 (1).

(11) "Small business recovery AND RESILIENCY fund" or "fund" means the small business recovery AND RESILIENCY fund established in ~~section 24-36-208~~ SECTION 24-48.5-608.

(12) "Small business recovery tax credit" or "tax credit" means the tax credit created in ~~section 24-36-206~~ SECTION 24-48.5-606.

(13) "Tax credit sale proceeds" or "sale proceeds" means the money or other liquid asset acceptable to the state treasurer that a qualified taxpayer pays to the department and that is deposited in the small business recovery AND RESILIENCY fund.

24-48.5-604. [Formerly 24-36-204] Small business recovery and resiliency loan program oversight board - creation - report. (1) The small business recovery AND RESILIENCY loan program oversight board is hereby created in the ~~department~~ DIVISION OF BUSINESS FUNDING AND INCENTIVES WITHIN THE OFFICE to help establish and oversee the terms and conditions of a contract or contracts through which the ~~treasurer~~ OFFICE may provide first loss capital to a loan program or the Colorado credit reserve. This section does not prohibit a loan program manager of a specific loan program or the Colorado credit reserve from establishing a separate investment advisory committee for that loan program.

(2) (a) The oversight board consists of five members, as follows:

(I) The state treasurer or the state treasurer's designee;

(II) The director of the minority business office created in section 24-49.5-102, on behalf of the office of economic development, or the director's designee;

(III) One member appointed by the speaker of the house of representatives;

(IV) One member appointed by the president of the senate; and

(V) One member appointed by the governor.

(b) The appointing authorities shall make their initial appointments to the oversight board no later than July 31, 2020.

(c) The members appointed pursuant to subsection (2)(a) of this section must have substantial private sector experience in commercial banking or capital market activities and must have obtained executive-level positions in these industries.

(d) The chair of the governor's council on economic stabilization and growth and the co-chairs of the council's financial services committee shall consult with and provide recommendations on initial appointments to the appointing authorities.

{Portions of the bill have been deleted to save space}

(12) (a) The oversight board shall submit a written report on the implementation of the loan program to the joint budget committee. The oversight board shall submit its first report on or before November 30, 2020, and shall submit the report each six months thereafter for a period of two years. After the report submitted November 30, 2022, the oversight board shall submit the report annually, on or before November 30 of each year. The oversight board shall also submit the report once each year in fiscal years 2020-21 and 2021-22 to the business affairs and labor committee of the house of representatives ~~or any successor committee,~~ and the business, labor, and technology committee of the senate, or any successor ~~committee~~ COMMITTEES. Notwithstanding the requirement in section 24-1-136 (11)(a)(I), the requirement to submit the report required in this subsection (11) continues until this section is repealed.

(b) The report must include, at a minimum, information on the following:

(I) The number and size of loans made;

(II) The geographic distribution of loans made;

(III) The distribution of loans made by business sector;

(IV) The demographics of the owners of the businesses receiving loans, including the number of businesses owned by women, minorities, and veterans;

(V) The number of loans made to rural businesses;

(VI) The size of the businesses receiving loans;

(VII) The number of people employed by the businesses receiving loans;

(VIII) Distributions or revenue received by the state from the program;

(IX) The financial performance of the fund;

(X) The default rates for loans made by the program;

(XI) Borrower interest rates on the loans and an explanation of how the rates comply with the requirements of ~~section 24-36-205 (4)(b)(V)~~ SECTION 24-48.5-605 (4)(b)(V); and

(XII) Any other information requested by the chair of the joint budget committee, OR BY the business affairs and labor committee of the house of representatives ~~or any successor committee,~~ or the business, labor, and technology committee of the senate, or any successor ~~committee~~ COMMITTEES.

(c) The oversight board shall make a presentation to a joint meeting of the business affairs and labor committee of the house of representatives and the business, labor, and technology committee of the senate, or any successor committees, at least once each fiscal year or more often if requested by the chairs of the committees.

~~(13) This section is repealed, effective June 30, 2029.~~

24-48.5-605. [Formerly 24-36-205] Small business recovery and resiliency loan program - creation - requirements - oversight. (1) (a) The ~~state treasurer~~ OFFICE is authorized to enter into a contract or contracts to establish a small business recovery AND RESILIENCY loan program in accordance with this ~~part 2~~ PART 6.

(b) The purpose of the loan program is to support the state's recovery from the economic crisis caused by COVID-19 through leveraging private investment to support Colorado small businesses recovering from the crisis caused by COVID-19 by making loans, acquiring participation interest in loans, leveraging private small business lending through the Colorado credit reserve program, or other activities that accomplish the same purpose. THE LOAN PROGRAM IS ALSO DESIGNED TO SUPPORT RESILIENCY FOR SMALL BUSINESSES AS NEW CHALLENGES EMERGE. The loan program ~~shall~~ MAY only make loans directly if federal or state bank regulators prohibit the banking industry from originating loans for the loan program.

(2) The ~~state treasurer~~ OFFICE may contract with the Colorado housing and finance authority created in part 7 of article 4 of title 29 or with a bank, nonprofit organization, nondepository community development financial institution, business development corporation, certified public accountant firm, or fund manager to administer a loan program. If the ~~state treasurer~~ OFFICE contracts with an entity other than the Colorado housing and finance authority to administer a loan program, the ~~state treasurer~~ OFFICE shall use an open and competitive process to select the entity. The ~~state treasurer~~ OFFICE shall consult with ~~the director of the office of economic development and~~ the oversight board in selecting and contracting with a loan program manager.

(3) (a) Notwithstanding any restriction on the investment of state money set forth in section 24-36-113 or in any other provision of law, subject to the availability of money in the small business recovery AND RESILIENCY fund and the requirements of this ~~part 2~~ PART 6, THE OFFICE MAY PROVIDE FIRST LOSS CAPITAL TO A LOAN PROGRAM OR PROGRAMS OR TO THE COLORADO CREDIT RESERVE FROM THE SMALL BUSINESS RECOVERY AND RESILIENCY FUND.

~~(I) In fiscal year 2020-21, the state treasurer may provide up to thirty million dollars in first loss capital to a loan program or programs or to the Colorado credit reserve from the small business recovery fund; and~~

~~(II) Subject to the limitations in subsection (3)(b) of this section, in fiscal years 2021-22, 2022-23, and 2023-24, the state treasurer may provide up to a total of forty million dollars in first loss capital to a loan program or programs or to the Colorado credit reserve from the small business recovery fund.~~

(b) The money provided under this subsection (3) must be provided in tranches of ten million dollars or less. ~~up to a maximum amount of fifty million dollars in all tranches combined across fiscal years 2020-21 through 2023-24. The state treasurer shall not provide a tranche to a loan program or to the Colorado credit reserve until at least ninety percent of the money in any prior tranche has been invested in small business loans in accordance with subsection (4) of this section, as determined by the oversight board and certified by the loan program manager. Money provided to the Colorado credit reserve is considered invested in small business loans for the purposes of this subsection (3)(b) once it is paid to the Colorado housing and finance authority.~~

{Portions of the bill have been deleted to save space}

(6) Distributions or revenue paid to the state pursuant to a contract under this section ~~shall~~ MUST be deposited in the small business recovery AND RESILIENCY fund. ~~except that, if such distributions or revenue are paid after the small business recovery fund is repealed, the money shall be paid to the state treasurer, who shall credit the money to the general fund.~~

(7) The loan program manager shall report on the implementation of the loan program to the oversight board at least quarterly, within one month after the end of each calendar quarter, or more often if requested by the oversight board. The ~~reports~~ REPORT must include the information necessary to allow the OVERSIGHT board to provide the reports required in ~~section 24-36-204 (12)~~ SECTION 24-48.5-604 (12), and any additional information requested by the board.

{Portions of the bill have been deleted to save space}

24-48.5-608. [Formerly 24-36-208] Small business recovery and resiliency fund. (1) The small business recovery AND RESILIENCY fund is hereby created in the state treasury. The fund consists of:

(a) Tax credit sale proceeds received from qualified taxpayers and deposited in the fund pursuant to ~~section 24-36-205~~ SECTION 24-48.5-605;

(b) Distributions, revenue, or money returned to the state from a loan program established pursuant to ~~section 24-36-205~~ SECTION 24-48.5-605 and deposited in the fund; ~~and~~

(c) Any other money that the general assembly may appropriate or transfer to the fund; AND

(d) ANY GIFTS, GRANTS, DONATIONS, OR FEDERAL FUNDS RECEIVED PURSUANT TO SUBSECTION (7) OF THIS SECTION.

(2) The state treasurer shall credit all interest and income derived from the deposit and investment of money in the small business recovery AND RESILIENCY fund to the fund.

(3) Money in the fund is continuously appropriated to the ~~department~~ OFFICE for the purposes specified in this ~~part 2~~ PART 6. The ~~department~~ OFFICE may expend money in the fund to pay for its direct and indirect costs in implementing and administering this ~~part 2~~ PART 6.

~~(4) Beginning in fiscal year 2027-28, the state treasurer shall credit any unexpended and unencumbered money remaining in the fund at the end of a fiscal year to the general fund.~~

~~(5) The state treasurer shall transfer all unexpended and unencumbered money in the fund at the end of the fiscal year on June 30, 2037, to the general fund.~~

~~(6) This section is repealed, effective July 1, 2037.~~

(4) THE OFFICE MAY SEEK, ACCEPT, AND EXPEND GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF THIS PART 6. THE OFFICE MAY ACCEPT AND EXPEND ANY FEDERAL MONEY MADE AVAILABLE FOR ANY PURPOSE CONSISTENT WITH THE PROVISIONS OF THIS PART 6. THE OFFICE SHALL TRANSMIT ALL MONEY RECEIVED THROUGH GIFTS, GRANTS, DONATIONS, OR FEDERAL MONEY TO THE STATE TREASURER, WHO SHALL CREDIT THE MONEY TO THE SMALL BUSINESS RECOVERY AND RESILIENCY FUND.

24-48.5-609. Transfer of functions - continuity of existence. (1) ON SEPTEMBER 1, 2024, THE POWERS, DUTIES, AND FUNCTIONS OF THE DEPARTMENT IN CONNECTION WITH THE SMALL BUSINESS RECOVERY AND RESILIENCY LOAN PROGRAM PURSUANT TO THE FORMER PART 2 OF ARTICLE 36 OF THIS TITLE 24 ARE TRANSFERRED TO THE OFFICE PURSUANT TO THIS SECTION.

(2) (a) On and after September 1, 2024, the officers and employees of the department whose powers, duties, and functions concern the small business recovery and resiliency loan program and whose employment is deemed necessary to carry out the small business recovery and resiliency loan program are transferred to the division of business funding and incentives within the office and become employees thereof.

(b) Any employees who are transferred to the office pursuant to this subsection (2) and who are classified employees in the state personnel system shall retain all rights to the personnel system and retirement benefits pursuant to the laws of the state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and regulations.

(3) On or before September 1, 2024, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the department pertaining to the powers, duties, and functions transferred to the office are transferred to and become the property of the office.

(4) Whenever the department or the state treasurer is referred to or designated by a contract or other document in connection with the powers, duties, and functions transferred to the office pursuant to this section, such reference or designation will be deemed to apply to the office, as applicable. All contracts entered into by the department or the state treasurer prior to September 1, 2024, in connection with the small business recovery and resiliency loan program are hereby validated, with the office succeeding to all the rights and obligations of such contracts. Any appropriations of money from prior fiscal years open to satisfy obligations incurred pursuant to such contracts are transferred and appropriated to the office for the payment of such obligations.

(5) All policies and guidelines of the department in connection with the powers, duties, and functions transferred to the office pursuant to this section continue to be effective until revised, amended, repealed, or nullified pursuant to law.

(6) THE RELOCATION OF THE CLIMBER ACT FROM THE DEPARTMENT TO THE OFFICE PURSUANT TO THIS PART 6 DOES NOT AFFECT THE VALIDITY OF ANY AGREEMENTS ENTERED INTO BY OR TAX CREDIT CERTIFICATES ISSUED BY THE STATE TREASURER OR THE DEPARTMENT PURSUANT TO THE AUTHORITY CONTAINED IN PART 2 OF ARTICLE 36 OF TITLE 24 AS IT EXISTED PRIOR TO SEPTEMBER 1, 2024.

SECTION 2. Repeal of relocated and nonrelocated provisions in this act. In Colorado Revised Statutes, **repeal** part 2 of article 36 of title 24; except that sections 24-36-209 and 24-36-210 are not relocated.

L.6.2 Adding a New Part with Relocated Provisions and Adding New Provisions Before the Relocated Provisions

This example demonstrates:

- The relocation of a single section to a new part, with multiple new sections also being added
- Where to place the “Formerly” information when an entire section is relocated to a new section, but new language precedes the relocated language (section 19-7-204)
- How to renumber subsections from a relocated section when they follow new subsections (19-7-204)
- How to show the repeal of the original section that is being relocated

The relocated section must also be shown as repealed in its original location.

SECTION 2. In Colorado Revised Statutes, **add with amended and relocated provisions** part 2 to article 7 of title 19 as follows:

PART 2
YOUTH SIBLINGS IN FOSTER CARE

19-7-201. Short title. THE SHORT TITLE OF THIS PART 2 IS THE "FOSTER YOUTH SIBLINGS BILL OF RIGHTS".

19-7-202. Legislative declaration. (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT IT IS BENEFICIAL FOR A YOUTH PLACED IN FOSTER CARE TO BE ABLE TO CONTINUE RELATIONSHIPS WITH THE YOUTH'S SIBLINGS, REGARDLESS OF AGE, SO THAT SIBLINGS MAY SHARE THEIR STRENGTHS AND ASSOCIATION IN THEIR EVERYDAY AND OFTEN COMMON EXPERIENCES.

(2) The general assembly further finds and declares that it is the responsibility of all adults involved in a youth's life, including but not limited to county departments, parents, foster parents, guardians ad litem, court-appointed special advocates, next of kin, treatment providers, and others, to seek opportunities to foster those sibling relationships to promote continuity and help to sustain family relationships.

(3) Because the number of family foster homes in Colorado is often insufficient to meet the needs of youth, including sibling groups, it is, therefore, Colorado's goal to continue to recruit foster families and build resources sufficient to meet this need.

19-7-203. Foster care sibling rights. (1) Sibling youth in foster care, except youth in the custody of the division of youth services created pursuant to section 19-2-203 or a state hospital for persons with mental health disorders, shall enjoy the following rights, unless they are not in the best interests of each sibling, regardless of whether the parental rights of one or more of the foster youth's parents have been terminated:

(a) To be placed in foster care homes with the youth's siblings, when it is in the best interests of each sibling and when the county department locates an appropriate, capable, willing, and available joint placement for the youth siblings, in order to sustain family relationships, pursuant to sections 19-3-213 (1)(c), 19-3-500.2, 19-3-507 (1)(b), 19-3-508 (1)(c), 19-3-605 (2), and 19-5-207.3 (2);

(b) To be placed in close geographical distance to the youth's siblings in order to promote continuity in the siblings' relationship;

(c) To obtain temporary respite placements together, when possible;

(d) To be placed with foster parents, placed with potential adoptive parents, and assigned to child welfare caseworkers who have been provided with training on the importance of sibling relationships;

(e) To be promptly notified, as permitted pursuant to state or federal law, about changes in sibling placement, catastrophic events, or other circumstances, including but not limited to new placements, significant life events, and discharge from foster care;

(f) To be included in permanency planning discussions or meetings for siblings, if appropriate;

(g) To maintain frequent and meaningful contact with the youth's siblings pursuant to section 19-7-204 (2), if placement together is not possible;

(h) To be actively involved in each other's lives and share celebrations, if the siblings choose to do so, including but not limited to birthdays, graduations, holidays, school and extracurricular activities, cultural customs in the siblings' native language, and other milestones;

(i) To annually receive contact information for all siblings in foster care, which may include a telephone number, address, social media accounts, and e-mail address, unless a foster parent has requested the foster parent's identifiable information not be disclosed pursuant to section 19-1-303 (2.7)(a), and to receive updated photos of siblings regularly by mail or e-mail, as appropriate;

(j) To have more private or less restrictive communication with siblings as compared to communication with others who are not siblings;

(k) To be provided with an explanation if contact with a sibling is restricted or denied, as permitted pursuant to state or federal law;

(l) To expect that the youth's guardian ad litem advocate on behalf of the youth for frequent contact and visits with siblings, unless the guardian ad litem determines through the guardian ad litem's independent investigation that the contact is not in the best interests of the youth;

(m) To have contact with siblings encouraged in any adoptive or guardianship placement; and

(n) To receive an age-appropriate and developmentally appropriate document from the department of human services setting forth the rights described in this section:

(I) Within thirty days of the date of any placement or any change in placement;

(II) On each occasion that a youth's case plan is modified;

(III) At each placement where the youth resides; and

(IV) ON AT LEAST AN ANNUAL BASIS.

(2) ADULT SIBLINGS OF YOUTH IN FOSTER CARE HAVE THE RIGHT TO BE CONSIDERED AS FOSTER CARE PROVIDERS, ADOPTIVE PARENTS, AND RELATIVE CUSTODIANS FOR THEIR SIBLINGS, IF THEY CHOOSE TO DO SO.

19-7-204. [Formerly 19-1-128] Foster care sibling visits - contact plan - rules - definition. (1) THE DEPARTMENT OF HUMAN SERVICES SHALL PROVIDE INFORMATION ON SIBLING CONTACT IN THE VISITATION PLAN FOR A YOUTH. IN DOING SO, THE YOUTH SHALL BE CONSULTED ABOUT THE YOUTH'S WISHES AS TO SIBLING CONTACT.

(2) AS WRITTEN IN THE VISITATION PLAN, THE DEPARTMENT OF HUMAN SERVICES SHALL, IF IT IS IN THE BEST INTERESTS OF EACH SIBLING:

(a) PROMOTE FREQUENT CONTACT BETWEEN SIBLINGS IN FOSTER CARE, WHICH MAY INCLUDE TELEPHONE CALLS, TEXT MESSAGES, SOCIAL MEDIA, VIDEO CALLS, AND IN-PERSON VISITS;

(b) CLARIFY THAT SIBLING CONTACT SHOULD NOT BE LIMITED IN TIME OR DURATION TO PERIODS OF PARENTAL CONTACT;

(c) CLARIFY THAT RESTRICTION OF SIBLING VISITS SHOULD NOT BE A CONSEQUENCE FOR BEHAVIORAL PROBLEMS. VISITS SHOULD ONLY BE RESTRICTED IF CONTRARY TO THE BEST INTERESTS OF A SIBLING.

(d) ENSURE TIMING AND REGULARLY SCHEDULED SIBLING VISITS ARE OUTLINED IN CASE PLANS BASED ON INDIVIDUAL CIRCUMSTANCES AND NEEDS OF THE YOUTH.

~~(1)~~ (3) If a ~~child~~ YOUTH in foster care ~~and his or her sibling mutually request~~ REQUESTS an opportunity to visit ~~each other~~ A SIBLING, the county department that has legal custody of the ~~child~~ YOUTH shall arrange the visit within a reasonable amount of time and document the visit.

~~(2)~~ (4) If a ~~child~~ YOUTH in foster care ~~and his or her sibling mutually request~~ REQUESTS an opportunity to visit ~~each other~~ A SIBLING on a regular basis, the county department that has legal custody of the ~~child~~ YOUTH shall arrange the visits and ensure that the visits occur with sufficient frequency and duration to promote continuity in the siblings' relationship.

~~(3)~~ (5) If, in arranging sibling visits pursuant to this section, a county department determines that a requested visit between the siblings would not be in the best interests of one or both of the siblings, the county department shall

deny the request, ~~and~~ document its reasons for making the determination, AND PROVIDE THE SIBLINGS WITH AN EXPLANATION FOR THE DENIAL, AS PERMITTED UNDER STATE AND FEDERAL LAW. In determining whether a requested visit would be in the best interests of one or both of the siblings, the county department shall ascertain whether there is pending in any jurisdiction a criminal action in which either of the siblings is either a victim or a witness. If such a criminal action is pending, the county department, before arranging any visit between the siblings, shall consult with the district attorney for the jurisdiction in which the criminal action is pending to determine whether the requested visit may have a detrimental effect upon the prosecution of the pending criminal action.

~~(4)~~ (6) Nothing in this section ~~shall be construed to require~~ REQUIRES or ~~permit~~ PERMITS a county department to arrange a sibling visit if such visit would violate an existing protection order in any case pending in this state or any other state.

~~(5)~~ (7) As used in this section, "sibling" means:

(a) A BIOLOGICAL sibling; ~~from birth who is descended from one or two mutual parents; or~~

(b) A ~~stepbrother or former stepbrother or a stepsister or former stepsister~~ STEP-SIBLING OR FORMER STEP-SIBLING; OR

(c) AN ADOPTIVE SIBLING.

~~(6)~~ (8) The state board of human services, created in section 26-1-107, ~~C.R.S.,~~ may promulgate rules for the implementation of this section.

SECTION 3. Repeal of relocated provisions in this act. In Colorado Revised Statutes, **repeal** 19-1-128.

L.7 Adding a New Section, Part, or Article with Relocated Subdivisions of a Section

When relocating multiple subdivisions of a section to different new sections, place the "Formerly" information after each new subsection number.

This example demonstrates:

- How to relocate individual subsections to different new sections

- How to renumber subdivisions of a relocated subdivision when the larger subdivision number is included in the "Formerly" information
- Where to place the bracketed "Formerly" information when relocating subdivisions of a section

SECTION 1. In Colorado Revised Statutes, **add with amended and relocated provisions** article 78 to title 23 as follows:

{Portions of the bill have been deleted to save space}

PART 2
COLLABORATIVE EDUCATOR PREPARATION
GRANT PROGRAM

23-78-201. [Formerly 23-1-120.9 (1)] Legislative declaration. The general assembly finds that, after studying the teacher shortage issue in Colorado, the department of higher education and the department of education concluded that one strategy for addressing the issue is to promote collaboration among educator preparation programs, alternative teacher programs, school districts, boards of cooperative services, and public schools to facilitate more effective preparation, placement, and retention of educators. The general assembly finds, therefore, that it is appropriate to create a grant program to support educator preparation partnerships involving educator preparation programs, alternative teacher programs, school districts, boards of cooperative services, and public schools to provide targeted educator preparation initiatives that improve the quality and applicability of educator preparation and the intentional placement of newly trained educators with school districts and public schools.

23-78-202. [Formerly 23-1-120.9 (2)] Definitions. As used in this ~~section~~ PART 2, unless the context otherwise requires:

~~(a)~~ (1) "Board of cooperative services" means a board of cooperative services created and existing pursuant to article 5 of title 22.

~~(b)~~ (2) "Educator preparation program" means an approved educator preparation program as defined in section 23-1-121 or an alternative teacher program as defined in section 22-60.5-102.

~~(c)~~ (3) "Local education provider" means a school district, board of cooperative services, or public school.

~~(d)~~ (4) "Public school" means a school that derives its support, in whole or in part, from money raised by a general state or school district tax and includes a school of a school district, a public school operated by a board of cooperative

services, and an institute charter school authorized by the state charter school institute pursuant to part 5 of article 30.5 of title 22.

~~(e)~~ (5) "School district" means a school district organized and existing pursuant to law but does not include a local college district.

23-78-203. Collaborative educator preparation grant program - created - reporting. (1) **[Formerly 23-1-120.9 (3)]** There is created in the department the collaborative educator preparation grant program to support development and implementation of targeted educator preparation initiatives by partnerships of educator preparation programs and local education providers to prepare educators specifically for employment by the partnering local education providers. Subject to available appropriations, the department shall award grants to partnerships of local education providers and educator preparation programs to fund educator preparation initiatives developed as provided in ~~subsection (4)~~ subsection (2) of this section.

(2) **[Formerly 23-1-120.9 (4)]** Beginning in August of 2018, the department, working with the rural education coordinator established pursuant to section 23-76-103, shall convene meetings between local education providers and educator preparation programs to assist them in developing joint, targeted educator preparation initiatives to submit for grant funding. The department may contract with one or more other entities to assist local education providers and educator preparation programs in developing initiatives. An educator preparation initiative may include but need not be limited to the following strategies:

(a) Teacher residency programs developed and operated jointly by an educator preparation program and a partnering local education provider;

(b) Programs to provide educator preparation for paraprofessionals already employed by the partnering local education provider or for students enrolled by or graduating from the partnering local education provider;

(c) Programs to support educator preparation specifically for local education providers in rural areas of the state;

(d) The use of technology to support long-distance supervision and support for educator candidates and newly licensed educators;

(e) Creation of a dual licensure preparation program to prepare an individual to meet multiple needs of a partnering local education provider; and

(f) Other activities or initiatives to align educator preparation programs and activities with the specific needs of the partnering local education providers.

(3) **[Formerly 23-1-120.9 (5)]** The department shall review the grant initiatives submitted by partnering educator preparation programs and local education providers, and developed as provided in ~~subsection (4)~~ subsection (2) of this section, and, subject to available appropriations, award one-time grants to the partnering educator preparation programs and local education providers. In awarding grants, the department shall consider the quality of the initiative, the level of difficulty demonstrated by the local education provider in attracting and retaining educators, the likelihood that the initiative will assist the local education provider in attracting and retaining educators to address particular educator shortages, the likelihood that the initiative will contribute to better student outcomes, and the provisions included for continuing the initiative after the grant money is no longer available.

(4) **[Formerly 23-1-120.9 (6)]** (a) Each partnership that receives a grant shall submit a report to the department concerning implementation of the grant initiative, which must include at a minimum:

(I) A description of the strategies implemented using the grant money;

(II) The number of educator candidates and newly licensed educators served; and

(III) An evaluation of the success of the strategies in improving the quality of preparation, meeting the needs of the partnering local education provider, and improving the retention of educators by the partnering local education provider, to the extent such information is available.

(b) On or before November 1, 2020, the department shall prepare and submit to the joint budget committee and the education committees of the house of representatives and the senate, or any successor committees, a report concerning the implementation of the collaborative educator preparation grant program. The report must include a summary of the information received from grant recipients pursuant to ~~subsection (6)(a)~~ subsection (4)(a) of this section and an evaluation of the effect of the grant program in increasing educator quality and educator retention and in reducing the educator shortage in the state.

(5) **[Formerly 23-1-120.9 (7)]** The general assembly shall appropriate money for the 2018-19 fiscal year to implement this section. Any unexpended and unencumbered money from the appropriation made for the purposes of this section remains available for expenditure by the department for the purposes of this section in the 2019-20 fiscal year without further appropriation.

L.8 Amending an Existing Section and Relocating Multiple Subsections From One Section

An existing section can be amended with the relocation of one or more subdivisions of a section and combined with amendments to other subdivisions of the existing section. The "Formerly" information should appear after the new subdivision number rather than after the section number.

SECTION 5. In Colorado Revised Statutes, 12-255-104, **amend** (1), (2), (4), (7), (9)(a) introductory portion, (9)(c), (11), and (13); and **add with amended and relocated provisions** (3.3), (5.3), (5.6), (5.7), and (8.5) as follows:

12-255-104. Definitions. As used in this article 255, unless the context otherwise requires:

(1) "Advanced practice nurse" means an advanced practice registered nurse who is a professional nurse and is licensed to practice pursuant to this ~~article 255~~ PART 1, who obtains specialized education or training as provided in this section, and who applies to and is accepted by the board for inclusion in the advanced practice registry.

(2) "Approved education program" means a course of training conducted by an educational or health care institution that implements the basic practical or professional nursing curriculum OR THE BASIC NURSE AIDE CURRICULUM, AS APPLICABLE, prescribed and approved by the board.

(3.3) **[Formerly 12-260-103 (3)]** "Certified nurse aide" means a person who meets the qualifications specified in PART 2 OF this ~~article 260~~ ARTICLE 255 and who is currently certified by the board. Only a person who holds a certificate to practice as a nurse aide in this state pursuant to ~~the provisions~~ PART 2 of this ~~article 260 shall have~~ ARTICLE 255 HAS the right to use the title "certified nurse aide" and its abbreviation, "C.N.A."

(4) "Delegated medical function" means an aspect of care that implements and is consistent with the medical plan as prescribed by a licensed or otherwise legally authorized physician, podiatrist, or dentist and is delegated to a registered professional nurse or a practical nurse by a physician, podiatrist, dentist, or physician assistant. For purposes of this subsection (4), "medical plan" means a written plan, verbal order, standing order, or protocol, whether patient specific or not, that authorizes specific or discretionary medical action, which may include but is not limited to the selection of medication. Nothing in this subsection (4) shall limit the practice of nursing as defined in this ~~article 255~~ PART 1.

(5.3) **[Formerly 12-260-103 (4)]** "Home health agency" means a provider of home health services, as defined in section 25.5-4-103 (7), that is certified by the department of public health and environment.

(5.6) **[Formerly 12-260-103 (5)]** "Medical facility" means a nursing facility licensed by the department of public health and environment or home health agencies certified to receive medicare or medicaid funds, pursuant to the federal "Social Security Act", as amended, distinct part nursing facilities, or home health agencies or entities engaged in nurse aide practice. "Medical facility" does not include hospitals and other facilities licensed or certified pursuant to section 25-1.5-103 (1)(a).

(5.7) **[Formerly 12-260-103 (6)]** "Nursing facility" ~~shall have~~ HAS the same meaning as set forth in section 25.5-4-103 (14).

(7) "Practical nurse", "trained practical nurse", "licensed vocational nurse", or "licensed practical nurse" means a person who holds a license to practice pursuant to this ~~article 255~~ PART 1 as a licensed practical nurse in this state or is licensed in another state and is practicing in this state pursuant to section 24-60-3802, with the right to use the title "licensed practical nurse" and its abbreviation, "L.P.N."

(8.5) **[Formerly 12-260-103 (7)]** "Practice of a nurse aide" or "nursing aide practice" means the performance of services requiring the education, training, and skills specified in PART 2 of this ~~article 260~~ ARTICLE 255 for certification as a nurse aide. These services are performed under the supervision of a dentist, physician, podiatrist, professional nurse, licensed practical nurse, or other licensed or certified health care professional acting within the scope of the professional's license or certificate.

(9) (a) "Practice of practical nursing" means the performance, under the supervision of a dentist, physician, podiatrist, or professional nurse authorized to practice in this state, of those services requiring the education, training, and experience, as evidenced by knowledge, abilities, and skills required in this ~~article 255~~ PART 1 for licensing as a practical nurse pursuant to section 12-255-114, in:

(c) Nothing in this ~~article 255 shall limit or deny~~ PART 1 LIMITS OR DENIES a practical nurse from supervising other practical nurses or other health care personnel.

(11) "Registered nurse" or "registered professional nurse" means a professional nurse, and only a person who holds a license to practice professional nursing in this state pursuant to this ~~article 255~~ PART 1 or who holds a license in

another state and is practicing in this state pursuant to section 24-60-3802 may use the title "registered nurse" and its abbreviation, "R.N."

(13) "Unauthorized practice", FOR PURPOSES OF THIS PART 1, means the practice of practical nursing or the practice of professional nursing by any person:

(a) Who has not been issued a license under this ~~article 255, or~~ PART 1;

(b) Who is not practicing in this state pursuant to section 24-60-3802; or

(c) Whose license has been suspended or revoked or has expired.

SECTION 6. Repeal of relocated provisions in this act. In Colorado Revised Statutes, **repeal** 12-260-103 (3), (4), (5), (6), and (7).

L.9 Amending an Existing Section and Relocating Subdivisions from Multiple Sections

This example includes the addition of new subsections relocated from two different sections and the amendment of section 24-37.5-102, including renumbering subsections to account for added and repealed subsections.

SECTION 5. In Colorado Revised Statutes, **amend with relocated provisions** 24-37.5-102 as follows:

24-37.5-102. Definitions. As used in this article 37.5, unless the context otherwise requires:

(1) **[Formerly 24-37.5-702 (1)]** "Advisory board" means the government data advisory board created in ~~section 24-37.5-703~~ SECTION 24-37.5-702.

(2) **[Formerly 24-37.5-402 (1)]** "Availability" means the timely and reliable access to and use of information created, generated, collected, or maintained by a public agency.

~~(1)~~ (3) "Chief information officer" means the chief information officer appointed pursuant to section 24-37.5-103.

~~(1.3) Repealed.~~

(4) **[Formerly 24-37.5-402 (3)]** "Confidentiality" means the preservation of authorized restrictions on information access and disclosure, including the means for protecting personal privacy and proprietary information.

(5) "DATA" MEANS FACTS THAT CAN BE COLLECTED, ANALYZED, OR USED IN AN EFFORT TO GAIN KNOWLEDGE OR MAKE DECISIONS, AND THAT ARE REPRESENTED AS TEXTS, NUMBERS, GRAPHICS, IMAGES, SOUNDS, AND VIDEOS.

(6) "DATA MANAGEMENT" MEANS DEVELOPMENT AND EXECUTION OF ARCHITECTURES, POLICIES, PRACTICES, AND PROCEDURES THAT PROPERLY MANAGE THE CREATION, COLLECTION, PROTECTION, SHARING, ANALYSIS, TRANSMISSION, STORAGE, AND DESTRUCTION OF DATA.

(7) **[Formerly 24-37.5-402 (4)]** "Department of higher education" means the Colorado commission on higher education, collegeinvest, the Colorado student loan program, the Colorado college access network, the private occupational school division, and the state historical society.

~~(1.5)~~ (8) "Disaster recovery" means the provisioning of THE OFFICE'S PROVIDED services for operational recovery, readiness, response, and transition of information technology applications, systems, or resources.

(9) "ENTERPRISE" MEANS:

(a) INFORMATION TECHNOLOGY SERVICES THAT CAN BE APPLIED ACROSS STATE GOVERNMENT; AND

(b) SUPPORT FOR INFORMATION TECHNOLOGY THAT CAN BE APPLIED ACROSS STATE GOVERNMENT, INCLUDING:

(I) TECHNICAL SUPPORT;

(II) SOFTWARE;

(III) HARDWARE;

(IV) PEOPLE; AND

(V) STANDARDS.

~~(1.6) "Enterprise agreement" means any agreement for the purchase of information technology or for the purchase of goods or services that are related to information technology that the office enters into for the benefit of the state and that is created in furtherance of the office's requirements or responsibilities specified in this article.~~

~~(1.7) "Enterprise facility" means any facility, including state offices, state warehouses, state leased spaces, and vendor facilities, that the office designates as a facility where state data, equipment, information technology, or goods~~

~~related to information technology will be located or where services related to information technology will be performed.~~

~~(1.8) "Independent verification and validation" means ensuring that a product, service, or system meets required specifications and that it fulfills its intended purpose. The review of such product, service, or system is typically performed by an independent third party.~~

~~(1.9)~~ (10) "Information security" means the protection of communication and information resources from unauthorized access, use, disclosure, disruption, modification, or destruction in order to:

(a) ~~Prevent improper information modification or destruction~~ PROTECT AGAINST THEFT OR MISAPPROPRIATION OF INFORMATION, AS WELL AS IMPROPER ACCESS, MODIFICATION, DEGRADATION, OR DESTRUCTION OF INFORMATION;

(b) Preserve authorized restrictions on information access and disclosure;

(c) Ensure timely and reliable access to and use of information; and

(d) Maintain the confidentiality, integrity, and availability of information.

(11) **[Formerly 24-37.5-402 (6)]** "Information security plan" means the plan developed by a public agency pursuant to section 24-37.5-404.

~~(2) "Information technology" means information technology and computer-based equipment and related services designed for the storage, manipulation, and retrieval of data by electronic or mechanical means, or both. The term includes but is not limited to:~~

~~(a) Central processing units, servers for all functions, network routers, personal computers, laptop computers, hand-held processors, and all related peripheral devices configurable to such equipment, such as data storage devices, document scanners, data entry equipment, specialized end-user terminal equipment, and equipment and systems supporting communications networks;~~

~~(b) All related services, including feasibility studies, systems design, software development, system testing, external off-site storage, and network services, whether provided by state employees or by others;~~

~~(c) The systems, programs, routines, and processes used to employ and control the capabilities of data processing hardware, including operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, application testing capabilities, storage system software, hand-held device operating systems, and computer networking programs; and~~

~~(d) The application of electronic information processing hardware, software, or telecommunications to support state government business processes.~~

(12) "INFORMATION TECHNOLOGY" MEANS TECHNOLOGY, INFRASTRUCTURE, EQUIPMENT, SYSTEMS, SOFTWARE, CONTROLLING, DISPLAYING, SWITCHING, INTERCHANGING, TRANSMITTING, AND RECEIVING DATA OR INFORMATION, INCLUDING AUDIO, VIDEO, GRAPHICS, AND TEXT. "INFORMATION TECHNOLOGY" SHALL BE CONSTRUED BROADLY TO INCORPORATE FUTURE TECHNOLOGIES THAT CHANGE OR SUPPLANT THOSE IN EFFECT AS OF THE EFFECTIVE DATE OF THIS SUBSECTION (12).

(13) "INFRASTRUCTURE" MEANS DATA AND TELECOMMUNICATIONS NETWORKS, DATA CENTER SERVICES, WEBSITE HOSTING AND PORTAL SERVICES, AND SHARED ENTERPRISE SERVICES SUCH AS EMAIL AND DIRECTORY SERVICES; EXCEPT THAT "INFRASTRUCTURE" DOES NOT INCLUDE THE PROVISION OF WEBSITE INFORMATION ARCHITECTURE AND CONTENT.

(14) **[Formerly 24-37.5-402 (7)]** "Institution of higher education" means a state-supported institution of higher education.

(15) **[Formerly 24-37.5-402 (8)]** "Integrity" means the prevention of improper information modification or destruction and ensuring information nonrepudiation and authenticity.

(16) **[Formerly 24-37.5-702 (4)]** "Interdepartmental data protocol" means file sharing and governance policies, processes, and procedures that permit the merging of data for the purposes of policy analysis and determination of program effectiveness.

~~(2.3)~~ (17) "Joint technology committee" means the joint technology committee created in section 2-3-1702. ~~C.R.S.~~

~~(2.5)~~ (18) "Local government" means the government of any county, city and county, home rule or statutory city, town, special district, or school district.

~~(2.6) (a) "Major information technology project" means a project of state government, excluding the department of education through June 30, 2019, that has a significant information technology component, including, without limitation, the replacement of an existing information technology system.~~

~~(b) As used in this subsection (2.6), "significant" means the project has a specific level of business criticality and manifests either a security risk or an~~

~~operational risk as determined by a comprehensive risk assessment performed by the office.~~

(19) "MAJOR INFORMATION TECHNOLOGY PROJECT" MEANS A PROJECT THAT CONSIDERS RISK, IMPACT ON EMPLOYEES AND CITIZENS, AND BUDGET, AND THAT INCLUDES AT LEAST ONE OF THE FOLLOWING: A COMPLEX SET OF CHALLENGES, A SPECIFIC LEVEL OF BUSINESS CRITICALITY, A COMPLEX GROUP OR HIGH NUMBER OF STAKEHOLDERS OR SYSTEM END USERS, A SIGNIFICANT FINANCIAL INVESTMENT, OR SECURITY OR OPERATIONAL RISK. A "MAJOR INFORMATION TECHNOLOGY PROJECT" INCLUDES, WITHOUT LIMITATION, IMPLEMENTING A NEW INFORMATION TECHNOLOGY SYSTEM OR MAINTAINING OR REPLACING AN EXISTING INFORMATION TECHNOLOGY SYSTEM.

(20) "NONGOVERNMENTAL ORGANIZATION" MEANS ANY SCIENTIFIC, RESEARCH, PROFESSIONAL, BUSINESS, OR PUBLIC-INTEREST ORGANIZATION THAT IS NEITHER AFFILIATED WITH NOR UNDER THE DIRECTION OF THE UNITED STATES GOVERNMENT OR ANY STATE OR LOCAL GOVERNMENT.

~~(3)~~ (21) "Office" means the office of information technology created pursuant to section 24-37.5-103.

(22) "PERSONAL IDENTIFYING INFORMATION" MEANS ANY INFORMATION THAT ALONE, OR IN COMBINATION WITH OTHER INFORMATION, CAN BE USED TO IDENTIFY AN INDIVIDUAL, INCLUDING, BUT NOT LIMITED TO, SOCIAL SECURITY NUMBER, DRIVER'S LICENSE NUMBER OR OTHER IDENTIFICATION NUMBER, BIOMETRIC DATA, PERSONAL HEALTH INFORMATION AS DEFINED BY THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", AS AMENDED, PUB.L. 104-191, AND OTHER INFORMATION THAT IS CONSIDERED PERSONAL INFORMATION OR PERSONALLY IDENTIFIABLE INFORMATION AS DEFINED IN LAW.

(23) **[Formerly 24-37.5-702 (6)]** "Political subdivision" means a municipality, county, city and county, town, or school district in this state.

(24) "PROJECT MANAGEMENT" MEANS THE APPLICATION OF KNOWLEDGE, SKILLS, TOOLS, AND TECHNIQUES TO SUPPORT COMPLETING OUTCOMES IDENTIFIED IN THE WORK.

~~(3.2)~~ (25) "Project manager" means a person who is trained ~~and experienced~~ in the ~~leadership and~~ management of information technology projects ~~from the commencement of such projects through their completion~~ AND IS RESPONSIBLE FOR ORGANIZING AND LEADING THE PROJECT TEAM THAT ACCOMPLISHES ALL OF THE PROJECT DELIVERABLES.

~~(3.5) Repealed.~~

(26) **[Formerly 24-37.5-402 (9)]** "Public agency" means every state office, whether executive or judicial, and all of its respective offices, departments, divisions, commissions, boards, bureaus, and institutions. "Public agency" does not include institutions of higher education or the general assembly.

(27) **[Formerly 24-37.5-402 (10)]** "Security incident" means an accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of communication and information resources.

~~(4)~~ (28) "State agency" means all of the departments, divisions, commissions, boards, bureaus, and institutions in the executive branch of the state government. "State agency" does not include the legislative or judicial department, the department of education, the department of law, the department of state, the department of the treasury, or state-supported institutions of higher education.

(29) "STATE INFORMATION TECHNOLOGY PERSONNEL" MEANS ANY PERSONNEL WHOSE EMPLOYMENT IS NECESSARY TO CARRY OUT THE PURPOSES OF THIS ARTICLE 33.5 BY THE CHIEF INFORMATION OFFICER AND TO ADMINISTER, PERFORM, AND ENFORCE THE POWERS, DUTIES, AND FUNCTIONS OF THE OFFICE.

SECTION 20. Repeal of relocated provisions in this act. In Colorado Revised Statutes, **repeal** 24-37.5-402 and 24-37.5-702.

L.10 Amending an Existing Section by Relocating Subdivisions of a Section Within the Same Section

In this example, only subsection (9) of section 18-1-1001 is being amended. The introductory portion to subsection (9)(b) was amended and became an independent paragraph, while subparagraphs (9)(b)(I) through (9)(b)(III) were relocated to subsection (9)(d) with a new introductory portion.

In order to ensure that the macro the Pub team uses to update the database recognizes that (9)(b)(I) through (9)(b)(III) are repealed and should be deleted from their current location, those paragraphs should be shown in stricken type in their original location.

Since only the subparagraphs from the original (9)(b) were relocated and not the IP, the "Formerly" information should be placed after each subparagraph number in the new location.

The example also demonstrates renumbering of the subdivisions within subsection (9) as a result of the adding paragraphs (d) [relocated from (b)] and (e) and combining the original paragraphs (e), (f), and (g) .

SECTION 2. In Colorado Revised Statutes, 18-1-1001, **amend with relocated provisions** (9) as follows:

18-1-1001. Protection order against defendant - definitions. (9) (a) **Order requirements.** When the court subjects a defendant to a mandatory protection order that ~~qualifies as an order described in 18 U.S.C. sec. 922 (g)(8)~~ THE COURT, USING THE PROBABLE CAUSE STANDARD OF REVIEW, DETERMINES ON THE RECORD AFTER REVIEWING THE PROBABLE CAUSE STATEMENT OR ARREST WARRANT THAT THE ORDER INCLUDES A CRIME THAT INCLUDES AN ACT OF DOMESTIC VIOLENCE, AS DEFINED IN SECTION 18-6-800.3 (1), AND THE ACT OF DOMESTIC VIOLENCE INVOLVED THE THREAT OF USE, USE OF, OR ATTEMPTED USE OF PHYSICAL FORCE, the court, as part of such order:

(I) Shall order the defendant to:

(A) Refrain from possessing or purchasing any firearm or ammunition for the duration of the order; and

(B) Relinquish, for the duration of the order, any firearm or ammunition in the defendant's immediate possession or control or subject to the defendant's immediate possession or control; and

(II) May require that before the defendant is released from custody on bond, the defendant shall relinquish, for the duration of the order, any firearm or ammunition in the defendant's immediate possession or control or subject to the defendant's immediate possession or control; AND

(III) SHALL SCHEDULE A COMPLIANCE HEARING PURSUANT TO SUBSECTION (9)(E) OF THIS SECTION AND NOTIFY THE DEFENDANT OF THE HEARING DATE AND THAT THE DEFENDANT SHALL APPEAR AT THE HEARING IN PERSON UNLESS THE HEARING IS VACATED PURSUANT TO SUBSECTION (9)(E)(I) OF THIS SECTION.

(b) **Time period to relinquish.** Upon issuance of an order pursuant to ~~paragraph (a) of this subsection (9)~~ SUBSECTION (9)(a) OF THIS SECTION, the defendant shall relinquish, IN ACCORDANCE WITH SUBSECTION (9)(d) OF THIS SECTION, any firearm or ammunition not more than twenty-four hours, EXCLUDING LEGAL HOLIDAYS AND WEEKENDS, after being served with the order; except that a court may allow a defendant ~~up to seventy-two hours~~ ADDITIONAL TIME BASED ON A SHOWING OF GOOD CAUSE to relinquish a firearm ~~or up to five days to relinquish ammunition pursuant to this paragraph (b)~~ if the defendant

demonstrates to the satisfaction of the court that ~~he or she~~ THE DEFENDANT is unable to comply within ~~twenty-four hours. To satisfy this requirement, the defendant may:~~ THE TIME FRAME SET FORTH IN THIS SUBSECTION (9)(b).

~~(I) Sell or transfer possession of the firearm or ammunition to a federally licensed firearms dealer described in 18 U.S.C. sec. 923, as amended; except that this provision shall not be interpreted to require any federally licensed firearms dealer to purchase or accept possession of any firearm or ammunition;~~

~~(II) Arrange for the storage of the firearm or ammunition by a law enforcement agency; except that this provision shall not be interpreted to require any law enforcement agency to provide storage of firearms or ammunition for any person; or~~

~~(III) Sell or otherwise transfer the firearm or ammunition to a private party who may legally possess the firearm or ammunition; except that a defendant who sells or transfers a firearm pursuant to this subparagraph (III) shall satisfy all of the provisions of section 18-12-112 concerning private firearms transfers, including but not limited to the performance of a criminal background check of the transferee.~~

(c) **Additional time to comply if defendant is in custody.** If a defendant is unable to satisfy the provisions of ~~paragraph (b) of~~ this subsection (9) because ~~he or she~~ THE DEFENDANT is incarcerated or otherwise held in the custody of a law enforcement agency, the court shall require the defendant to satisfy ~~such~~ THE provisions of this subsection (9) not more than twenty-four hours, EXCLUDING LEGAL HOLIDAYS AND WEEKENDS, after ~~his or her~~ THE DEFENDANT'S release from incarceration or custody or be held in contempt of court. Notwithstanding any provision of this ~~paragraph (c)~~ SUBSECTION (9)(c), the court may, in its discretion, require the defendant to relinquish any firearm or ammunition in the defendant's immediate possession or control or subject to the defendant's immediate possession or control before the end of the defendant's incarceration OR RELEASE FROM CUSTODY. In such a case, a defendant's failure to relinquish a firearm or ammunition as required ~~shall constitute~~ CONSTITUTES contempt of court.

(d) **Relinquishment options.** TO SATISFY THE REQUIREMENT IN SUBSECTION (9)(b) OF THIS SECTION, THE DEFENDANT SHALL EITHER:

(I) **[Formerly 18-1-1001 (9)(b)(I)]** Sell or transfer possession of the firearm or ammunition to a federally licensed firearms dealer described in 18 U.S.C. sec. 923, as amended; except that this provision ~~shall~~ MUST not be interpreted to require any federally licensed firearms dealer to purchase or accept possession of any firearm or ammunition; OR

(II) **[Formerly 18-1-1001 (9)(b)(II)]** Arrange for the storage of the firearm or ammunition by a law enforcement agency OR BY A STORAGE FACILITY WITH WHICH THE LAW ENFORCEMENT AGENCY HAS CONTRACTED FOR THE STORAGE OF TRANSFERRED FIREARMS OR AMMUNITION, PURSUANT TO SUBSECTION (9)(g) OF THIS SECTION; except that this provision ~~shall~~ MUST not be interpreted to require any law enforcement agency to provide storage of firearms or ammunition for any person; or

(III) **[Formerly 18-1-1001 (9)(b)(III)]** Sell or otherwise transfer the firearm or ammunition to a private party who may legally possess the firearm or ammunition; except that a defendant who sells or transfers a firearm pursuant to this ~~subparagraph (III)~~ SUBSECTION (9)(d)(III) shall satisfy all of the provisions of section 18-12-112 concerning private firearms transfers, including but not limited to the performance of a criminal background check of the transferee.

(e) **Compliance hearing, conditions of release on bond, and affidavit.** (I) THE COURT SHALL CONDUCT A COMPLIANCE HEARING TO ENSURE THE DEFENDANT HAS COMPLIED WITH THIS SUBSECTION (9) BY REQUIRING THE DEFENDANT TO COMPLY WITH SUBSECTION (9)(e)(II) OF THIS SECTION. THE COURT MAY CONSIDER THE ISSUE IN OTHER PROCEEDINGS BEFORE THE COURT IN THE CRIMINAL CASE. THE HEARING IS CONSIDERED A COURT ACTION INVOLVING A BOND REDUCTION OR MODIFICATION AS DESCRIBED IN SECTION 24-4.1-302 (2)(c). A DEFENDANT SHALL COMPLY WITH SECTION 16-4-105 (4.1) AS IT RELATES TO THE CONDITIONS OF RELEASE ON BOND. THE COURT MAY VACATE THE HEARING IF THE COURT DETERMINES THAT THE DEFENDANT HAS COMPLETED THE AFFIDAVIT DESCRIBED IN SUBSECTION (9)(e)(II) OF THIS SECTION. FAILURE TO APPEAR AT A HEARING DESCRIBED IN THIS SUBSECTION (9)(e)(I) CONSTITUTES CONTEMPT OF COURT.

(II) THE DEFENDANT SHALL COMPLETE AN AFFIDAVIT, WHICH MUST BE FILED IN THE COURT RECORD WITHIN SEVEN BUSINESS DAYS AFTER THE ORDER IS ISSUED, STATING THE NUMBER OF FIREARMS IN THE DEFENDANT'S IMMEDIATE POSSESSION OR CONTROL OR SUBJECT TO THE DEFENDANT'S IMMEDIATE POSSESSION OR CONTROL, THE MAKE AND MODEL OF EACH FIREARM, ANY REASON THE DEFENDANT IS STILL IN IMMEDIATE POSSESSION OR CONTROL OF SUCH FIREARM, AND THE LOCATION OF EACH FIREARM. IF THE DEFENDANT DOES NOT POSSESS A FIREARM AT THE TIME THE ORDER IS ISSUED PURSUANT TO SUBSECTION (9)(a) OF THIS SECTION, THE DEFENDANT SHALL INDICATE SUCH NONPOSSESSION IN THE AFFIDAVIT.

(III) IF THE DEFENDANT POSSESSED A FIREARM AT THE TIME OF THE QUALIFYING INCIDENT GIVING RISE TO THE DUTY TO RELINQUISH THE FIREARM PURSUANT TO THIS SUBSECTION (9) BUT TRANSFERRED OR SOLD THE FIREARM TO A

PRIVATE PARTY PRIOR TO THE COURT'S ISSUANCE OF THE ORDER, THE DEFENDANT SHALL DISCLOSE THE SALE OR TRANSFER OF THE FIREARM TO THE PRIVATE PARTY IN THE AFFIDAVIT DESCRIBED IN SUBSECTION (9)(e)(II) OF THIS SECTION. THE DEFENDANT, WITHIN SEVEN BUSINESS DAYS AFTER THE RELINQUISHMENT PERIOD ESTABLISHED BY THE COURT PURSUANT TO THIS SUBSECTION (9), SHALL ACQUIRE A WRITTEN RECEIPT AND SIGNED DECLARATION THAT COMPLIES WITH SUBSECTION (9)(h)(I)(A) OF THIS SECTION, AND THE DEFENDANT SHALL FILE THE SIGNED DECLARATION AT THE SAME TIME THE DEFENDANT FILES THE AFFIDAVIT PURSUANT TO SUBSECTION (9)(e)(II) OF THIS SECTION.

(IV) NO TESTIMONY OR OTHER INFORMATION COMPELLED PURSUANT TO THIS SUBSECTION (9), OR ANY INFORMATION DIRECTLY OR INDIRECTLY DERIVED FROM SUCH TESTIMONY OR OTHER INFORMATION, MAY BE USED AGAINST THE DEFENDANT IN ANY CRIMINAL CASE, EXCEPT PROSECUTION FOR PERJURY PURSUANT TO SECTION 18-8-503.

(V) THE STATE COURT ADMINISTRATOR SHALL DEVELOP THE AFFIDAVIT DESCRIBED IN SUBSECTION (9)(e)(II) OF THIS SECTION AND ALL OTHER FORMS NECESSARY TO IMPLEMENT THIS SUBSECTION (9) NO LATER THAN JANUARY 1, 2022. STATE COURTS MAY USE THE FORMS DEVELOPED BY THE STATE COURT ADMINISTRATOR PURSUANT TO THIS SUBSECTION (9)(e) OR ANOTHER FORM OF THE COURT'S CHOOSING, SO LONG AS THE FORMS COMPLY WITH THE REQUIREMENTS OF THIS SUBSECTION (9)(e).

(VI) UPON THE SWORN STATEMENT OR TESTIMONY OF THE PETITIONER OR OF ANY LAW ENFORCEMENT OFFICER ALLEGING THERE IS PROBABLE CAUSE TO BELIEVE THE RESPONDENT HAS FAILED TO COMPLY WITH THE PROVISIONS OF THIS SECTION, THE COURT SHALL DETERMINE WHETHER PROBABLE CAUSE EXISTS TO BELIEVE THAT THE RESPONDENT HAS FAILED TO RELINQUISH ALL FIREARMS OR A CONCEALED CARRY PERMIT IN THE RESPONDENT'S CUSTODY, CONTROL, OR POSSESSION. IF PROBABLE CAUSE EXISTS, THE COURT SHALL ISSUE A SEARCH WARRANT THAT STATES WITH PARTICULARITY THE PLACES TO BE SEARCHED AND THE ITEMS TO BE TAKEN INTO CUSTODY.

~~(d)~~ (f) **Relinquishment to a federally licensed firearms dealer.** A federally licensed firearms dealer who takes possession of a firearm or ammunition pursuant to this ~~section~~ SUBSECTION (9) shall issue a WRITTEN receipt AND SIGNED DECLARATION to the defendant at the time of relinquishment. THE DECLARATION MUST MEMORIALIZE THE SALE OR TRANSFER OF THE FIREARM. The federally licensed firearms dealer shall not return the firearm or ammunition to the defendant unless the dealer:

(I) Contacts the ~~bureau~~ COLORADO BUREAU OF INVESTIGATION, REFERRED TO IN THIS SUBSECTION (9) AS "THE BUREAU", to request that a CRIMINAL background check of the defendant be performed; and

(II) Obtains approval of the transfer from the bureau after the performance of the CRIMINAL background check.

~~(e)~~ (g) **Storage by a law enforcement agency or storage facility.** (I) A local law enforcement agency may elect to store firearms or ammunition for ~~persons~~ A DEFENDANT pursuant to this subsection (9). THE LAW ENFORCEMENT AGENCY MAY ENTER INTO AN AGREEMENT WITH ANY OTHER LAW ENFORCEMENT AGENCY OR STORAGE FACILITY FOR THE STORAGE OF TRANSFERRED FIREARMS OR AMMUNITION. If ~~an~~ A LAW ENFORCEMENT agency ~~so~~ elects TO STORE FIREARMS OR AMMUNITION FOR A DEFENDANT:

~~(I)~~ (A) The LAW ENFORCEMENT agency may charge a fee for ~~such~~ THE storage, the amount of which ~~shall~~ MUST not exceed the direct and indirect costs incurred by the LAW ENFORCEMENT agency in providing ~~such~~ THE storage;

~~(II)~~ (B) The LAW ENFORCEMENT agency ~~may~~ SHALL establish policies for disposal of abandoned or stolen firearms or ammunition; and

~~(III)~~ (C) The LAW ENFORCEMENT agency shall issue a WRITTEN receipt AND SIGNED DECLARATION to ~~each~~ THE defendant at the time ~~the defendant relinquishes possession of a firearm or ammunition~~ OF RELINQUISHMENT. THE DECLARATION MUST MEMORIALIZE THE SALE OR TRANSFER OF THE FIREARM.

~~(f)~~ (II) If a local law enforcement agency elects to store firearms or ammunition for a defendant pursuant to this ~~subsection (9)~~ SUBSECTION (9)(g), the law enforcement agency shall not return the firearm or ammunition to the defendant unless the LAW ENFORCEMENT agency:

~~(I)~~ (A) Contacts the bureau to request that a CRIMINAL background check of the defendant be performed; and

~~(II)~~ (B) Obtains approval of the transfer from the bureau after the performance of the CRIMINAL background check.

~~(g) (I)~~ (III) (A) A law enforcement agency that elects to store a firearm or ammunition for a defendant pursuant to this subsection (9) may elect to cease storing the firearm or ammunition. A law enforcement agency that elects to cease storing a firearm or ammunition for a defendant shall notify the defendant of ~~such~~ THE decision and request that the defendant immediately make arrangements for the transfer of the possession of the firearm or ammunition to the defendant or, if

the defendant is prohibited from possessing a firearm, to another person who is legally permitted to possess a firearm.

~~(II)~~ (B) If a law enforcement agency elects to cease storing a firearm or ammunition for a ~~person~~ DEFENDANT and notifies the defendant as described in ~~subparagraph (I) of this paragraph (g)~~ SUBSECTION (9)(g)(III)(A) OF THIS SECTION, the law enforcement agency may dispose of the firearm or ammunition if the defendant fails to make arrangements for the transfer of the firearm or ammunition and complete ~~said~~ THE transfer within ninety days ~~of~~ AFTER receiving ~~such~~ THE notification.

(IV) A LAW ENFORCEMENT AGENCY THAT ELECTS TO STORE A FIREARM OR AMMUNITION SHALL OBTAIN A SEARCH WARRANT TO EXAMINE OR TEST THE FIREARM OR AMMUNITION OR FACILITATE A CRIMINAL INVESTIGATION IF A LAW ENFORCEMENT AGENCY HAS PROBABLE CAUSE TO BELIEVE THE FIREARM OR AMMUNITION HAS BEEN USED IN THE COMMISSION OF A CRIME, IS STOLEN, OR IS CONTRABAND. THIS SUBSECTION (9)(g)(IV) DOES NOT PRECLUDE A LAW ENFORCEMENT AGENCY FROM CONDUCTING A ROUTINE INSPECTION OF THE FIREARM OR AMMUNITION PRIOR TO ACCEPTING THE FIREARM FOR STORAGE.

(h) **Relinquishment to a private party.** (I) If a defendant sells or otherwise transfers a firearm or ammunition to a private party who may legally possess the firearm or ammunition, as described in ~~subparagraph (III) of paragraph (b) of this subsection (9)~~ SUBSECTION (9)(d)(III) OF THIS SECTION, the defendant shall acquire:

~~(I)~~ (A) From the ~~transferee~~ FEDERALLY LICENSED FIREARMS DEALER, a written receipt ~~acknowledging~~ AND SIGNED DECLARATION MEMORIALIZING the transfer, which receipt ~~shall~~ MUST be dated and signed by the defendant, ~~and~~ the transferee, AND THE FEDERALLY LICENSED FIREARMS DEALER; and

~~(II)~~ (B) From the FEDERALLY licensed ~~gun~~ FIREARMS dealer who requests from the bureau a CRIMINAL background check of the transferee, as described in section 18-12-112, a written statement of the results of the CRIMINAL background check.

(II) THE DEFENDANT SHALL NOT TRANSFER THE FIREARM TO A PRIVATE PARTY LIVING IN THE SAME RESIDENCE AS THE DEFENDANT AT THE TIME OF THE TRANSFER.

(III) NOTWITHSTANDING SECTION 18-12-112, IF A PRIVATE PARTY ELECTS TO STORE A FIREARM FOR A DEFENDANT PURSUANT TO THIS SUBSECTION (9), THE PRIVATE PARTY SHALL NOT RETURN THE FIREARM TO THE DEFENDANT UNLESS THE

PRIVATE PARTY ACQUIRES FROM THE FEDERALLY LICENSED FIREARMS DEALER WHO REQUESTS FROM THE BUREAU A CRIMINAL BACKGROUND CHECK OF THE DEFENDANT, A WRITTEN STATEMENT OF THE RESULTS OF THE BACKGROUND CHECK AUTHORIZING THE RETURN OF THE FIREARM TO THE DEFENDANT.

(i) **Requirement to file signed declaration.** (I) ~~Not more than three business days after the relinquishment,~~ The defendant shall file a copy of the ~~receipt~~ SIGNED DECLARATION issued pursuant to ~~paragraph (d), (e), or (h) of this subsection (9)~~ SUBSECTION (9)(f), (9)(g)(I)(C), OR (9)(h)(I)(A) OF THIS SECTION, and, if applicable, the written statement of the results of a CRIMINAL background check performed on the defendant, as described in ~~subparagraph (II) of paragraph (h) of this subsection (9)~~ SUBSECTION (9)(h)(I)(B) OF THIS SECTION, with the court as proof of the relinquishment AT THE SAME TIME THE DEFENDANT FILES THE SIGNED AFFIDAVIT PURSUANT TO SUBSECTION (9)(e)(II) OF THIS SECTION. THE SIGNED DECLARATION AND WRITTEN STATEMENT FILED PURSUANT TO THIS SUBSECTION (9)(i) ARE ONLY AVAILABLE FOR INSPECTION BY THE COURT AND THE PARTIES TO THE PROCEEDING. If a defendant fails to timely TRANSFER OR SELL A FIREARM OR file ~~a receipt~~ THE SIGNED DECLARATION or written statement as described in this ~~paragraph (i)~~ SUBSECTION (9)(i)(I):

(A) The failure constitutes a violation of the protection order pursuant to section 18-6-803.5 (1)(c); and

(B) The court shall issue a warrant for the defendant's arrest.

(II) In any subsequent prosecution for a violation of a protection order described in this ~~paragraph (i)~~ SUBSECTION (9)(i), the court shall take judicial notice of the defendant's failure to TRANSFER OR SELL A FIREARM, OR file ~~a receipt~~ THE SIGNED DECLARATION or written statement, which ~~will constitute~~ CONSTITUTES prima facie evidence of a violation of the protection order pursuant to section 18-6-803.5 (1)(c), ~~C.R.S.,~~ and testimony of the clerk of the court or ~~his or her~~ THE CLERK OF THE COURT'S deputy is not required.

(j) Nothing in this subsection (9) ~~shall be construed to limit~~ LIMITS a defendant's right to petition the court for dismissal of a protection order.

(k) A ~~person~~ DEFENDANT subject to a mandatory protection order issued pursuant to this subsection (9) who possesses or attempts to purchase or receive a firearm or ammunition while the protection order is in effect violates the order pursuant to section 18-6-803.5 (1)(c).

(l) (I) A law enforcement agency that elects in good faith to not store a firearm or ammunition for a defendant pursuant to ~~subsection (9)(b)(II)~~

SUBSECTION (9)(g) of this section ~~shall~~ IS not ~~be held~~ criminally or civilly liable for such ~~election not to act~~ INACTION.

(II) A law enforcement agency that returns possession of a firearm or ammunition to a defendant in good faith as permitted by ~~paragraph (f) of this subsection (9) shall~~ SUBSECTION (9)(g) OF THIS SECTION IS not ~~be held~~ criminally or civilly liable for such action.

(m) **Immunity.** A FEDERALLY LICENSED FIREARMS DEALER, LAW ENFORCEMENT AGENCY, STORAGE FACILITY, OR PRIVATE PARTY THAT ELECTS TO STORE A FIREARM PURSUANT TO THIS SUBSECTION (9) IS NOT CIVILLY LIABLE FOR ANY RESULTING DAMAGES TO THE FIREARM, AS LONG AS SUCH DAMAGE DID NOT RESULT FROM THE WILLFUL AND WRONGFUL ACT OR GROSS NEGLIGENCE OF THE FEDERALLY LICENSED FIREARMS DEALER, LAW ENFORCEMENT AGENCY, STORAGE FACILITY, OR PRIVATE PARTY.

L.11 Relocating Subdivisions of One Section to Multiple Sections

Different subdivisions of one section can be relocated to multiple sections. In this example, the subsections in section 26-2-138 were relocated to two different sections.

The repeal clause repealed the entire section.

SECTION 2. In Colorado Revised Statutes, 8-3.7-102, **amend** (5); and **add with amended and relocated provisions** (2.5), (4.5), and (7.5) as follows:

8-3.7-102. Definitions. As used in this article 3.7, unless the context otherwise requires:

(2.5) **[Formerly 26-2-138 (1)(b)]** ~~"Program"~~ "COLORADO REFUGEE SERVICES PROGRAM" OR "CRSP" means the Colorado refugee services program ~~established pursuant to subsection (2)(a) of this section~~ DESCRIBED IN SECTION 8-3.7-108.

(4.5) **[Formerly 26-2-138 (1)(a)]** "Federal act" means Title IV of the federal "Immigration and Nationality Act", 8 U.S.C. sec. 1521 et seq., including any federal rules adopted pursuant to the federal act.

(5) "Immigrant" or "new American" means a Coloradan who has arrived, or an individual who will arrive, to Colorado as an immigrant or refugee and includes the individual's children. "Immigrant" or "new American" includes: Refugees, asylees, special immigrant visa holders, victims of trafficking, recipients of the

federal deferred action for childhood arrivals program, INDIVIDUALS GRANTED HUMANITARIAN PAROLE, and all other immigrants and aspiring citizens seeking opportunity, safety, or reunification of family.

(7.5) **[Formerly 26-2-138 (1)(c)]** "State plan" means Colorado's refugee services plan described in ~~subsection (2)(b) of this section~~ SECTION 8-3.7-108.

SECTION 4. In Colorado Revised Statutes, **add with amended and relocated provisions** 8-3.7-108 as follows:

8-3.7-108. Refugee services program - transfer to ONA - state plan - rules. (1) **[Formerly 26-2-138 (2)(a)]** (a) (I) ON AND AFTER OCTOBER 1, 2024, THE RIGHTS, POWERS, DUTIES, AND FUNCTIONS REGARDING the Colorado refugee services program ~~is established in the state~~ VESTED IN THE department OF HUMAN SERVICES PRIOR TO SAID DATE ARE TRANSFERRED FROM THE DEPARTMENT OF HUMAN SERVICES TO THE ONA, AND THE ONA SHALL EXECUTE, ADMINISTER, PERFORM, AND ENFORCE THE RIGHTS, POWERS, DUTIES, AND FUNCTIONS REGARDING THE CRSP ON AND AFTER SAID DATE. BY APRIL 1, 2024, THE DEPARTMENT OF LABOR AND EMPLOYMENT AND THE DEPARTMENT OF HUMAN SERVICES SHALL ENTER INTO AN INTERAGENCY AGREEMENT TO FACILITATE THE LOGISTICS OF CONTRACTING AND THE TRANSFER OF THE CRSP TO THE ONA.

(II) (A) AS OF OCTOBER 1, 2024, EMPLOYEES OF THE DEPARTMENT OF HUMAN SERVICES PRIOR TO SAID DATE WHOSE POWERS, DUTIES, AND FUNCTIONS CONCERNED THE POWERS, DUTIES, AND FUNCTIONS REGARDING THE COLORADO REFUGEE SERVICES PROGRAM THAT ARE ASSUMED BY THE ONA PURSUANT TO SUBSECTION (1)(a)(I) OF THIS SECTION AND WHOSE EMPLOYMENT IN THE ONA IS DEEMED NECESSARY BY THE DIRECTOR OF THE ONA TO CARRY OUT THE PURPOSES OF THE CRSP ARE TRANSFERRED TO THE ONA AND BECOME EMPLOYEES OF THE ONA.

(B) ANY EMPLOYEES TRANSFERRED TO THE ONA PURSUANT TO THIS SUBSECTION (1)(a)(II) WHO ARE CLASSIFIED EMPLOYEES IN THE STATE PERSONNEL SYSTEM RETAIN ALL RIGHTS TO THE PERSONNEL SYSTEM AND RETIREMENT BENEFITS PURSUANT TO THE LAWS OF THIS STATE, AND THEIR SERVICE IS DEEMED TO HAVE BEEN CONTINUOUS. ANY TRANSFERS AND ANY ABOLISHMENT OF POSITIONS IN THE STATE PERSONNEL SYSTEM SHALL BE MADE AND PROCESSED IN ACCORDANCE WITH STATE PERSONNEL SYSTEM LAWS AND RULES.

{Portions of the bill were deleted to save space}

(b) The ONA SHALL ADMINISTER THE COLORADO REFUGEE SERVICES program ~~must be administered~~ in accordance with the state plan ~~developed by~~

~~the state department and~~ approved by the federal office of refugee resettlement within the federal department of health and human services pursuant to the federal act.

(2) **[Formerly 26-2-138 (2)(b)]** The ~~state department~~ ONA is the single state agency responsible for the development, review, and administration of the state plan.

(3) **[Formerly 26-2-138 (3)]** The ~~program~~ CRSP must provide the following, in accordance with the federal act and the state plan:

(a) Refugee cash assistance;

(b) Refugee medical assistance;

(c) Refugee social services, which may include ~~but are not limited to~~ employment services, employability assessments, English language instruction, vocational training, skills recertification, and case management services related to employment; and

(d) Any other services or assistance consistent with the federal act.

(4) **[Formerly 26-2-138 (4)]** The ~~program~~ CRSP may provide other services or assistance to support refugee resettlement and integration. ~~The program shall assist the Colorado office of new Americans in carrying out its duties and goals as specified in section 8-3.7-103 (2)(g), including the sharing of outcomes, partnerships, and the alignment of mission and purpose.~~

(5) **[Formerly 26-2-138 (5)]** The ~~state department~~ ONA shall adopt rules, in accordance with article 4 of title 24, to implement this section.

(6) **[Formerly 26-2-138 (6)]** The general assembly may appropriate funds to the ~~state department~~ ONA for the administration of the ~~program~~ CRSP.

SECTION 5. Repeal of relocated provisions in this act. In Colorado Revised Statutes, **repeal** 26-2-138.

L.12 Relocating a Single Paragraph to More than One Location

If a single paragraph or sentence is being divided up and relocated to more than one new section or more than one new subsection, there are two ways to show the changes.

L.12.1 Using the "Formerly" Note to Identify Specific Sentences Being Relocated

For a small paragraph with several sentences, use the “Formerly” note to indicate which sentence or sentences are being relocated.

29-2-203. Collection, administration, and enforcement of sales or use tax. (1) [Formerly 29-2-106 (1)] ~~The collection, administration, and enforcement of~~ UNLESS OTHERWISE PROVIDED IN THIS PART 2, EXECUTIVE DIRECTOR SHALL COLLECT, ADMINISTER, ENFORCE, AND DISTRIBUTE any ~~countywide or any city or town~~ sales OR USE tax adopted BY A STATUTORY LOCAL GOVERNMENT, SPECIAL DISTRICT, OR REQUESTING HOME RULE JURISDICTION ~~pursuant to this article shall be performed by the executive director of the department of revenue~~ in the same manner as the collection, administration, and enforcement of the colorado state sales ~~tax. Unless otherwise provided in this article, the provisions of~~ AND USE TAX PURSUANT TO article 26 of title 39. ~~C.R.S., shall govern the collection, administration, and enforcement of sales taxes authorized under this article in collecting, administering, and enforcing a sales tax authorized under this article, the state sales tax authorized under part 1 of article 26 of title 39, C.R.S.., or any other sales tax imposed within the boundaries of a county, the executive director of the department of revenue may enter into an intergovernmental agreement with a county pursuant to the provisions of section 39-26-122.5, C.R.S., to enhance systemic efficiencies in the collection of such taxes.~~

(2) **[Formerly the last sentence of 29-2-106 (3)(a)]** Except as provided in section 39-26-208, ~~C.R.S.,~~ EACH STATUTORY LOCAL GOVERNMENT SHALL COLLECT, ADMINISTER, AND ENFORCE any use tax imposed pursuant to section 29-2-109 ~~shall be collected, administered, and enforced by the city, town, or county~~ as provided by ordinance or resolution, AND SHALL RESOLVE DISPUTES PURSUANT TO SECTION 29-2-302.

29-2-207. Distributions. (1) [Formerly the first two sentences of 29-2-106 (3)(a)] The executive director, ~~of the department of revenue shall, at no charge, except as provided in paragraph (b) of this subsection (3), administer, collect, and distribute any sales tax imposed in conformity with this article. The executive director~~ shall make monthly distributions of sales or use tax collections to the appropriate OFFICIAL ~~liaison~~ in each ~~county and in each incorporated city or town in the amount determined under the distribution formula established in accordance with this article.~~ STATUTORY LOCAL GOVERNMENT, SPECIAL DISTRICT, AND REQUESTING HOME RULE JURISDICTION.

(2) **[Formerly 29-2-106 (10)]** (a) If any sales OR USE tax to be distributed pursuant to this ~~section~~ PART 2 is not distributed within sixty days after the processing date, THE DEPARTMENT SHALL ADD interest ~~shall be added~~ to the undistributed amount from the sixtieth day after the processing date until the date ~~such~~ THAT THE sales OR USE tax is distributed. The rate of ~~said~~ interest ~~shall be~~ IS equal to the average rate, rounded to one-thousandth of a percent, being earned by the investment of ~~moneys~~ MONEY in the state treasury for the same period.

(b) ~~The provisions of this subsection (10) shall apply only to sales tax collected by the department of revenue with a processing date occurring on or after January 1, 2001.~~ The provisions of this ~~subsection (10) shall~~ SUBSECTION (2) DO not apply ~~in the event that~~ IF the distribution of sales OR USE tax was delayed as a result of ~~unforseen~~ UNFORESEEN circumstances or caused primarily by an entity other than the department, ~~of revenue. Such determination~~ WHICH DETERMINATION THE DEPARTMENT shall ~~be made~~ MAKE in good faith. ~~by the department.~~

L.12.2 Using Strike Type and Small Caps to Show What Is Being Relocated

If the paragraph is very long with too many sentences to make counting them realistic, or if a single sentence is being divided up, show all of the language as relocated in one section. The language that is to be relocated to a different section should be shown in strike type in the relocated provision and in small caps in the second section.

This example demonstrates:

- A single sentence being divided into two sections:
    - The original sentence was section 35-28-119 (4), which is repealed from its original location
    - The sentence is relocated to section 35-28-119.1, where the portion of the section that will be relocated to section 35-28-119.2 is shown in strike type
    - The language stricken from section 35-28-119.1 is shown in small caps in the new section 25-28-119.2

SECTION 1. In Colorado Revised Statutes, 35-28-119, **repeal** (4) as follows:

35-28-119. Records - information - hearings. (4) ~~No person shall be excused from attending and testifying or from producing documentary evidence before the commissioner in obedience to the subpoena of the commissioner on the ground or for the reason that the testimony or evidence, documentary or~~

~~otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may be so required to testify or produce evidence, documentary or otherwise, before the commissioner in obedience to a subpoena issued by him; except that no natural person so testifying shall be exempt from prosecution and punishment for perjury in the first degree committed in so testifying.~~

SECTION 2. In Colorado Revised Statutes, **add with amended and relocated provisions** 35-28-119.1 as follows:

35-28-119.1. [Formerly 35-28-119 (4)] No excuse from attending, testifying, or producing evidence. ~~No~~ A person ~~shall be~~ IS NOT excused from attending and testifying or from producing documentary evidence before the commissioner in obedience to the subpoena of the commissioner on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of ~~him~~ THE PERSON may tend to incriminate ~~him~~ THEM or subject ~~him~~ THEM to a penalty or forfeiture. ~~but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may be so required to testify or produce evidence, documentary or otherwise, before the commissioner in obedience to a subpoena issued by him; except that no natural person so testifying shall be exempt from prosecution and punishment for perjury in the first degree committed in so testifying.~~

SECTION 3. In Colorado Revised Statutes, **add** 35-28-119.2 as follows:

35-28-119.2. No prosecution or penalty for self incrimination. A NATURAL PERSON SHALL NOT BE PROSECUTED OR SUBJECTED TO ANY PENALTY OR FORFEITURE FOR OR ON ACCOUNT OF ANY TRANSACTION, MATTER, OR THING CONCERNING WHICH THE PERSON MAY BE SO REQUIRED TO TESTIFY OR PRODUCE EVIDENCE, DOCUMENTARY OR OTHERWISE, BEFORE THE COMMISSIONER IN OBEDIENCE TO A SUBPOENA ISSUED BY THE COMMISSIONER; EXCEPT THAT A NATURAL PERSON SO TESTIFYING IS NOT EXEMPT FROM PROSECUTION AND PUNISHMENT FOR PERJURY IN THE FIRST DEGREE COMMITTED WHEN TESTIFYING.

Note: When dividing up a section in this manner, be sure to include both new sections in the comparative table.

L.13 Amending and Relocating a Provision That Becomes Similar To One or More Other Provisions That are Being Repealed

A section can be relocated and amended in a way that makes the new section similar to one or more other provisions that are being repealed in the same bill. If the drafter wants to show that all of the provisions are similar, a modified "Formerly" statement can be used to alert the reader to the amendments.

35-36-103. [Formerly 35-36-111 and similar to 35-37-116 (1) and 35-37-120] Commissioner - rules - delegation of powers and duties - repeal. (1) (a) The commissioner ~~may~~ SHALL promulgate ~~such~~ rules in accordance with article 4 of title 24 as are necessary for the administration of this article 36. ON OR BEFORE DECEMBER 31, 2020, THE COMMISSIONER MUST PROMULGATE RULES THAT INCLUDE RULES REGARDING:

(I) FINANCIAL ASSURANCE REQUIREMENTS, INCLUDING A SCHEDULE FOR APPLICANTS TO FILE A BOND WITH THE COMMISSIONER;

(II) REQUIREMENTS FOR MAINTAINING RECORDS;

(III) INITIAL AND RENEWAL LICENSE REQUIREMENTS;

(IV) REQUIREMENTS FOR CREDIT SALE CONTRACTS;

(V) REQUIREMENTS FOR WAREHOUSE OPERATIONS; AND

(VI) THE CAPACITY OF ANIMAL FEEDING OPERATIONS FOR PURPOSES OF THIS ARTICLE 36.

(b) (I) BEFORE THE COMMISSIONER PROMULGATES THE RULES LISTED IN SUBSECTION (1)(a) OF THIS SECTION, THE DEPARTMENT SHALL CONVENE A STAKEHOLDERS' GROUP AS SOON AS PRACTICABLE TO WORK ON DRAFTING THE RULES. THE STAKEHOLDERS' GROUP MUST INCLUDE:

(A) ONE OR MORE COMMODITY HANDLERS WHO PURCHASE LESS THAN TWO HUNDRED FIFTY THOUSAND DOLLARS WORTH OF COMMODITIES AND FARM PRODUCTS EACH YEAR;

(B) ONE OR MORE COMMODITY HANDLERS WHO PURCHASE TWO HUNDRED FIFTY THOUSAND DOLLARS WORTH OR MORE OF COMMODITIES AND FARM PRODUCTS EACH YEAR;

(C) ONE OR MORE SMALL-VOLUME DEALERS;

(D) ONE OR MORE DEALERS;

(E) ONE OR MORE AGRICULTURAL TRADE ASSOCIATIONS REPRESENTED IN THE STATE; AND

(F) ANY OTHER PERSON THAT THE COMMISSIONER DEEMS NECESSARY TO INCLUDE.

(II) THIS SUBSECTION (1)(b) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2021.

(2) The commissioner ~~shall be~~ IS the enforcing authority of this article 36, and the commissioner or the commissioner's authorized representative ~~shall have~~ HAS free and unimpeded access to all places of business and all business records of ~~the~~ A licensee LICENSED UNDER PART 2 OR PART 3 OF THIS ARTICLE 36 THAT ARE pertinent to any proper inquiry in the administration of this article 36. Any person in whom the enforcement of ~~any provision of~~ this article 36 is vested has the power of a peace officer as to the enforcement.

(3) The COMMISSIONER MAY DELEGATE THE COMMISSIONER'S powers and duties ~~of the commissioner~~ set forth in this article 36 ~~may be delegated~~ to qualified employees of the department.