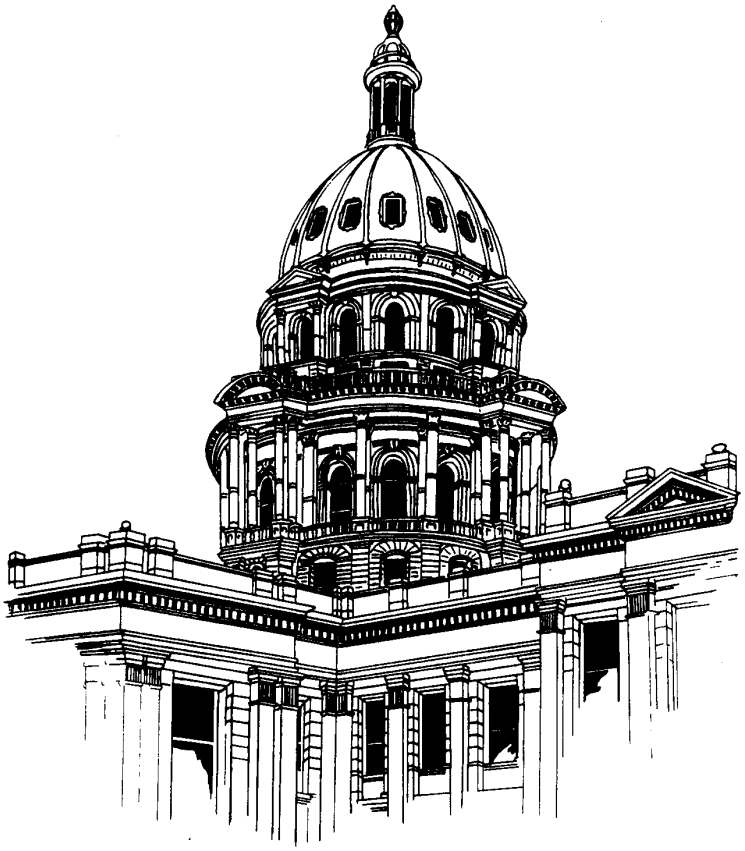

COLORADO LEGISLATIVE DRAFTING MANUAL

prepared by
THE OFFICE OF LEGISLATIVE LEGAL SERVICES

an agency of the
Colorado General Assembly

Online Edition

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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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. While 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 such 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, an exception to the confidentiality rule is provided by section 2-3-505, C.R.S., which allows "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."

It should be noted that an attorney-client relationship may exist between the lawyers in the Office of Legislative Legal Services 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.

1.1.2 Completing the Bill Request Form

At the time a request for a bill is made, a bill request form is completed by the Office of Legislative Legal Services. In addition to accepting requests from members who actually come into the Office of Legislative Legal Services, requests may be accepted by telephone, messenger, or e-mail.

The general subject matter of each request is designated by category on the request form. In most cases, the category is determined by the C.R.S. title number that the request primarily concerns. One of the following categories should be selected:

Categories	**C.R.S. Title No.**
Administrative Rule Review	(Rule review bill)
Agriculture	35
Aircraft and Airports	41
Appropriations	(None)
Behavioral Health	27
Children and Domestic Matters	14, 19
Consumer and Commercial Transactions	4-6
Corporations and Associations	7
Corrections	17
Courts	13
Criminal Law and Procedure	16, 18
District Attorneys	20
Education - Public Schools	22
Education - Universities and Colleges	23
Elections	1
Financial Institutions	11
General Assembly	2
Government - County	30
Government - Local	29
Government - Municipal	31
Government - Special Districts	32
Government - State	24
Also included under this bill category are all laws without C.R.S. numbers (unless the subject properly belongs under a specific bill category), except proposed constitutional amendments, appropriations, and the administrative rule review bill.	
Health and Environment	25
Health Care Policy and Financing	25.5
Human Services	26
Immigration	(Various)
Insurance	10
Labor and Industry	8, 9
Military and Veterans	28
Motor Vehicles and Traffic Regulation	42
Natural Resources	33, 34, 36
Probate, Trusts, and Fiduciaries	15
Professions and Occupations	12
Property	38
Public Utilities	40
State Public Defender	21
Statutes	(Revisor's bills)
Taxation	39
Transportation	43

United States 3
Water and Irrigation 37
HCR, SCR, HJR, SJR, HR, SR, HJM, SJM, HM, or SM . . . (Resolutions and Memorials)

The specific subject of the request may be entered on the "SUBJECT" line of the request form. Subjects should be like "Personnel system - maximum salary", rather than like "Amend personnel laws to increase maximum salary". The details about what the measure will *do* should be entered in the area of the form headed "Drafting Instructions".

Usually the person making the request will be the prime sponsor of the bill, and such person's name should be entered on the appropriate line of the request form. Occasionally, a request will be made by someone other than the legislator who will introduce the bill. Under such circumstances, the name of the person who will introduce the bill should be entered on the sponsor line with the notation "(verify)", or the words "no name" should be entered on the sponsor line, with the appropriate information added in parentheses, such as "(Governor)", "(Sen. Smith)", "(Interim Committee on Public Education)", etc.

Only the prime sponsor's name should appear on the bill unless members also wishing to sponsor the measure personally notify the Office of their intent to be sponsors, or unless a staff member of the Office of Legislative Legal Services personally verifies with a legislator that such legislator wishes to be a sponsor. An exception to this rule is made for interim bills, for which the Legislative Council staff furnishes a list of sponsors. Cosponsor sheets are furnished to the prime sponsor at the time the bill is delivered. If, prior to the bill's introduction, the prime sponsor obtains on such sheet the initials or signature of those members also wishing to sponsor the bill, the names of such members will appear on the printed bill.

If a prepared draft of the proposed legislation accompanies the request, the person accepting the request should ask who prepared the draft and how to get in touch with such person since questions about the draft could arise. In order to comply with the statute on confidentiality, the person taking the request should also ask the sponsor if the Legislative Council staff may release copies of the bill to affected state agencies prior to introduction for the purpose of preparing the fiscal note on the bill.

After the bill request form is completed, a bill request number is assigned to and entered on the bill request form. This "LLS Number" will appear in the upper left-hand corner of each draft of the bill and every version of the bill after it is introduced.

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. It is not the position of the drafter to supply the policy of any bill or to question the political strategy or the need for requested legislation.

Obviously, the precise objective of the sponsor cannot be achieved if the drafter has only a vague impression of what the sponsor seeks to accomplish. Furthermore, if the drafter exercises unwarranted discretion in "filling in the details" without consulting with the sponsor, the legislation may produce results that the sponsor did not intend.

Thus, 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 that must be pursued 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 sponsor must be so notified.

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, because of the complexity of the subject matter, the sponsor cannot give explicit instructions, nor can the drafter anticipate every policy question that will arise in the course

of drafting the bill. When the instructions are incomplete, the sponsor's objective and various means by which that objective can be accomplished must be analyzed. Then the drafter should check again with the sponsor on policy questions. As the drafting of the legislation proceeds, additional questions concerning policy may arise and subsequent conferences with the sponsor may be necessary.

The drafter should always request the name of any person that should be contacted in case questions arise during the drafting process. The sponsor may prefer that an aide, a lobbyist, a constituent, or another 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. The drafter should also ask the sponsor whether consultation with the state agency responsible for administering a program proposed by the bill would be permitted prior to the bill's introduction.

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

Amendment 10 of the U.S. Constitution contains a reservation of power to the states, which reservation 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, Cl 2 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 section 8 of article I 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. Section 4 of article I 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. Section 10 of article I 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.

Section 1 of article IV requires that each state give full faith and credit to the laws and judicial proceedings of other states. Section 2 of article IV 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: A state legislature may not prohibit religious freedom; establish religion; restrict freedom of speech or of the press; deprive persons of equal protection of the law or of the right to life, liberty, or property without due process; deprive persons of the right of peaceable assembly, the right to bear arms, or the right to petition the government for redress of grievances; infringe on the right to vote based on race or sex; require, in time of peace, that a soldier be quartered in any house without the owner's consent; make persons subject to unreasonable searches and seizures; in criminal actions, compel the defendant to be a witness against himself or deny a defendant the right to a speedy trial by an impartial jury of his peers, the right to know the charges against him, the right to be confronted by witnesses against him and have witnesses testify for him, or the right to have assistance of counsel; impose excessive bail or inflict cruel and unusual punishment; deny the right of trial by jury in certain cases; or subject a person to double jeopardy.

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.

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 ("The Taxpayer's Bill of Rights", see Chapter 9 of this manual titled "Article X, Section 20"). 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. In recent sessions, bills concerning highways, billboards, water pollution, air pollution, and unemployment compensation are examples of bills that were based on federal legislation in order to assure that federal funds would be available to the state. After checking the federal laws and determining how the requirements of such laws will affect a proposed bill, the drafter should ask the sponsor if such requirements conflict with the intended purpose of the bill.

1.2.4 Approval or Rejection of Prior Colorado Case Law

Drafters should be aware that 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". See *Rauschenberger v. Radetsky,* 745 P.2d 620 (Colo. 1987) and *Semendinger v. Britain,* 770 P.2d 1270 (Colo. 1989). In applying that presumption, the court in *Rauschenberger* 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, in 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 should 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. The aim of these inquiries would be to identify any cases that might present a problem of interpretation if the statute is amended without revising that portion and the presumption is subsequently applied. If any such cases are identified, the drafter should talk to the sponsor about the possibility of such a presumption being applied in a way that might be contrary to the intent of the bill.

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 found in the Colorado Legislator's Handbook issued by the Colorado Legislative Council.

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 a signed approval sheet has been received 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; except that Joint Rule No. 23 (g) prohibits the introduction of most resolutions and memorials during the last twenty days of any session unless permission is granted by the Committee on Delayed Bills.

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

1.3 SOURCES FOR RESEARCH

A bill can be modeled on a law or bill that is similar to the one being prepared. Revision of a law or bill already prepared usually takes much less time than writing a new bill. Another benefit of using existing or model legislation is exposure to the views of someone else and to problems and solutions that might have been overlooked.

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

The language in an existing law often has been construed administratively or judicially. Using successfully "tried and tested" procedure or language is preferable to taking chances on new language. However, existing laws are not always perfect in form, style, or substance and may need to be adjusted to fit the needs of the bill being drafted. 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 13, Colorado Revised Statutes, can be used to trace cites 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 be of help in drafting similar resolutions and memorials for a current session. Each drafter should study several volumes of Session Laws to review the form of the acts included therein, the titles to the various acts, the content of the acts themselves and their arrangement, and the application of Joint Rule No. 21 of the Senate and House of Representatives (discussed later) in Chapter 5 of this manual titled "Special Rules and Techniques of Drafting".

Session Laws are cited as follows: "Session Laws of Colorado 1987" or "Session Laws of Colorado 1986, Second Extraordinary Session".

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 number and 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, it could be determined immediately 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.

1.3.4 Bills from Prior Sessions

A bill may be based on a similar bill prepared for a prior session. The Office of Legislative Legal Services 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 file for the old request sheet for additional information. The journals of the particular session or the Office materials containing bill histories should also be checked 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 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 - 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 (their 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. Note 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. Drafters should remain aware of this possibility as well.

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 and inform him or her that the Office believes his or her request may be a duplicate of another bill request that has been 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. (NOTE: 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 his or her 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 his or her permission to disclose his or her identity to the other member who requested the bill. At this time, the drafter should clarify that he or she is seeking the same permission from the other member, and the other member might not give permission for such disclosure. If neither member gives permission to contact the other member, 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 his or her 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 assuming the role of 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 his or her 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 which bill will contain the duplicate provision — or whether it will appear 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), he or she should consult his or her

team leader or a senior staff member in the Office.

1.3.6 Laws and Bills of Other States

The drafter should 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. Legislative service agencies of other states usually furnish copies of bills promptly upon request. In addition, the drafter may research and obtain copies of bills and statutes of other states by using electronic databases available to the Office. In following a statute of another state, the drafter must change the form and terminology to conform to Colorado style and rules.

Pursuant to section 2-3-506, C.R.S., staff members of the Office of Legislative Legal Services may use the facilities of the Supreme Court Library for their work. Special arrangements may be made for access to the library outside of working hours, and the copying machine may be used according to copy card policies.

1.3.7 Uniform and Model Acts

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

The drafter should become familiar with an annual publication of the Council of State Governments titled "Suggested State Legislation". Copies are available in the office for current and past years. These reports contain so-called "model acts" that differ from "uniform acts" in that they can be used as guides for legislation in which uniformity is not required.

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 take the form of an original enactment. New sub-subparagraphs, subparagraphs, paragraphs, subsections, sections, parts, and articles may be added so as to fit into C.R.S., however, new titles are rarely created. Exceptions to the rule that new material must fit into C.R.S. are allowed for appropriation bills and other bills whose applicability is strictly limited in time - probably less than one year. (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 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 take the form of an amendment or repeal. If an amendment is required, 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.

If any statutory subdivision is to be repealed, the drafter must remember to amend out any references to the repealed subdivision that are contained in other C.R.S. sections. Sections that refer to a subdivision to be repealed may be determined by performing a computer search of the statutes for references to the section that contains the repealed subdivision. However, this search will not provide you with 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".

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 (the effective date and applicability section may be combined);

(10) Safety clause or effective date clause.

1.4.2.2 Suggested Article Outline Structure

When a new article 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.

The provisions of bills vary so much in character that no definite rules can be laid down for their order except to say that a logical arrangement of the provisions should be observed. It is also of great help to examine the 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 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 will receive a bill request that is accompanied by a prepared draft. As mentioned earlier, the person taking the request should ask who prepared the draft and note this information on the bill request form. In such cases, unless instructed otherwise, the drafter's function is to check the draft for accuracy and consistency with other laws, to make necessary changes and corrections where inconsistencies occur, and to check the draft as to form. Changes having no purpose other than to substitute one's own preference in expression should be avoided -- many times, editorial changes in language to suit a drafter's preference result in unintended but serious substantive changes. Clarity of expression is essential, and revisions may be made whenever they demonstrably improve the draft. When instructed to review a draft for *form only*, that fact should be indicated on the bill request form. In some cases, it might also be wise to contact the person who prepared the draft before *any* changes are made; this is true of bills drafted, for example, by bond attorneys in Denver who are especially versed in technical requirements of legislation pertaining to bond issues or refunding of bonds.

1.4.4 Use of Redactable Drafting Notes.

A tool that can be very useful to the drafter is the use of redactable drafting notes. An icon on the WordPerfect toolbar that looks like this can be used to insert drafting questions or comments in the draft of a bill that is being circulated for comment. This can be an effective method to communicate drafting questions or comments, 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: Bill requests are oral or written, and can be taken by telephone, messenger, e-mail, or in person. If submitted by persons other than 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 a LLS Number. A description of the bill is then logged on a "member card" kept for each member and entered into the Colorado Legislative Information and Communications System (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: If a draft of the bill is submitted, a staff attorney or legislative editor edits and "cleans up" the draft; otherwise, 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., and proofs the bill draft against existing law if amended.

RE-TYPING: Editing changes made to the bill draft by the legislative editor are made in the computer and the bill draft is printed out in proper bill form. Bills are stored in CLICS and identified by the Bill Request Number or "LLS Number".

PROOFREADING: The entire bill is proofread from draft to copy to detect typing or format problems. If the bill contains many errors, it may be re-typed again for corrections and re-proofed for errors before being given to the team leader.

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.

BILL SPONSOR REVIEW: The prepared draft is then forwarded 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. The sponsor approves the bill for introduction.

ASSEMBLING AND DELIVERING: Legislative editors are responsible for making copies of each bill and assembling the original and copies with sponsor sheets and bill backs. Each bill is logged as "complete" and a bill count for each legislator is kept. Some bills are "prefiled" and delivered directly to the Secretary of the Senate or the Chief Clerk of the House for introduction. Other bills are delivered to the sponsor and the sponsor submits the bill to the Secretary of the Senate or the Chief Clerk of the House for introduction. 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. For reference to these rules, see the Colorado Legislator's Handbook. Amendments to bills can be proposed by members when the bill is being considered by the standing 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 whatever are added.

- **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, require a second and third reading in both houses.

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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.

2.1.1 The Single-Subject Requirement

The state constitution requires that a bill (except general appropriation bills) shall contain but one subject, which shall be clearly expressed in the bill's title. This requirement is found in section 21 of article V of the state constitution, as follows:

> 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 is not obnoxious to the constitution. *Clare v. People*, 9 Colo. 122, 10 P. 799 (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. In 1964, for example, when it was necessary in order to comply with the judicial reform amendment to the state constitution 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 some 400 different sections of existing statutes under a general title (Ch. 39, Session Laws of Colorado 1964).

However, a bill that includes a subject not contained in its title is void as to the subject not expressed in the title. In *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 amendatory act, the title of which related to "fees", was void, since "salary" was not germane to the title.

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, there is compliance with section 21 of article V (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, *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."

The period of time during which a title defect can be used as the basis for an objection in a judicial proceeding is apparently limited to causes of action arising or filed between enactment of the bill with the title defect and the subsequent enactment of the annual bill that reenacts the laws passed at the previous session as the statutory supplement and replacement volumes, *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 (then the Legislative Drafting Office) published a research memorandum titled "Bills to Contain One Subject", which explores the single-subject requirement in some detail. A portion of this memorandum is contained in Appendix F of this manual.

2.1.2 Examples of Titles - General, Specific, Narrow

Bill titles may range from very broad to very narrow. Examples:

> *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 TRANSPORTATION OF CHILDREN TO AND FROM PUBLIC SCHOOLS.
> (The body of the bill could contain any matter concerning financing transportation of 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 DELAY UNTIL NOT LATER THAN SEPTEMBER 15, 1995, OF STATE BOARD OF EDUCATION DEADLINES FOR IMPLEMENTING STANDARDS-BASED EDUCATION.
> (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.)

2.1.3 Practical and Strategic Considerations - Desires of Sponsor

When taking a request for a bill, the sponsor's preference as to type of title should be noted on the request form. 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 or the sponsor may want a narrow or "tight" title so that the bill cannot be altered by amendments containing matters not intended to be a part of the bill.

In 1984, the Legislative Procedures Committee of the Legislative Council adopted a policy that the Office of Legislative Legal Services should use tight titles on bills unless otherwise instructed by the legislator requesting the bill. The policy leaves the final determination of the nature of the title with the sponsor.

In any case, the drafter should be careful to avoid unnecessarily broad titles. While a title usually should not be so tight as to prohibit amendments that can be reasonably foreseen 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.

2.1.4 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.

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" (Ch. 36, Session Laws of Colorado 1966). (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 of Legislative Legal Services 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.

Narrative titles should be avoided. Narrative titles are those that, rather than stating a single subject common to all matters in a bill, list at length all matters addressed in a bill. For example, this title from a 1993 bill on workers' compensation: "CONCERNING THE RESPONSIBILITY OF INSURERS AND SELF-INSURED EMPLOYERS 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 OR THE IMPAIRMENT RATING OF THE CLAIMANT UPON REQUEST OF THE CLAIMANT SUBJECT TO REIMBURSEMENT THROUGH AN OFFSET AGAINST THE PERMANENT DISABILITY AWARD OR UPON A DETERMINATION OF THE INDIGENCY OF THE CLAIMANT BASED ON ADJUSTED GROSS FAMILY INCOME OF ONE HUNDRED TWENTY-FIVE PERCENT OR LESS OF THE FEDERAL POVERTY LEVEL PURSUANT TO THE INCOME CRITERIA FOR THE COLORADO MEDICALLY INDIGENT PROGRAM."

The phrase "and for other purposes" 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.

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.

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 (the remainder of the title) provides helpful notice about the two major provisions of the bill.

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.

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".

As a rule, citations to the Colorado Revised Statutes should not be used in a title except for purposes of restricting the subject matter of the bill. 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.

"Blind" titles, such as "A BILL FOR AN ACT TO REPEAL ARTICLE 21 OF TITLE 23, COLORADO REVISED STATUTES", should not be utilized without stating the subject of the statutory material cited, because lack of a subject causes confusion in the assigning of a bill to committee and in the indexing of a bill, and fails to give notice of the contents of the bill. A short title may also present a hindrance for purposes of future referencing.

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."

2.1.5 Commas and Other Punctuation in Bill Titles

In order to follow the constitutional mandates about bills having a single subject and not changing the original purpose of the bill, the Office of Legislative Legal Services has adopted a general policy of composing bill titles in a manner which states the single subject at the beginning of the bill title. To help identify clearly a bill's single subject, a comma 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.

2.1.6 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 such a 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.

2.1.7 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".

2.2 BILL TOPIC

Each bill, resolution, and memorial is assigned an unofficial bill topic. The bill topic is a very 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 chambers and may appear in the televised proceedings. Since the 1995 legislative session, the Office of Legislative Legal Services has been responsible for drafting the bill topic. The bill topic is drafted when the bill, resolution, or memorial itself is drafted. It does not appear on the measure itself, 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 of statutory or nonstatutory short titles with bill topics, in 2014 the term 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) 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 no-fault insurance rates would expect to find the bill by looking at the entries for "Insurance", "No-fault", or possibly "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 (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.

(3) 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 (a.k.a. "spin"). Rather, the purpose is to

describe the primary topic, purpose, or effect of the bill, and so a bill topic should be written in objective and neutral language. For instance, a bill topic should not include subjective, value-laden words such as "improve", "enhance", or "better"; instead, use neutral descriptions such as "more stringent", "decrease requirements", "more funding", "standardize", etc.

(4) 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.

(5) When possible, the bill topic should state a subject, like "Alcoholic Beverages Produced In Colo". However, the bill topic may also use verbs like "Recodify Traffic Laws" or "Retaining Abandoned Property".

(6) The bill topic does not have to be 100% technically accurate and does not have to identify 100% of the contents of the bill. Instead, 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.

(7) 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.

(8) The bill topic should be in lower case letters with the first letter of each word capitalized, i.e., "Initial Capped". There should be no period at the end. The bill drafting macro automatically puts quotation marks around the bill topic.

(9) 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: "Colo Youth Small Game Hunting"; "Workers' Comp Motor Vehicle Accidents".

(10) Because each of the words of the bill topic is used individually to create the subject index which 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 standard abbreviations can be found on the internet at
http://leg.colorado.gov/sites/default/files/bill-topic-abbreviations.pdf
or on the OLLSet intra-office website under "Bill Drafting > Miscellaneous".

(11) Do NOT make up abbreviations. Use abbreviations for things only when their meaning is widely recognized, ex: RTD, TANF.

(12) Apply this TEST: Separate out the words from the proposed bill topic and think about whether the average subject index user would think of that individual word to try to find this bill? If the answer is no, then the bill topic needs modification.

(13) Do NOT abbreviate every word in the bill topic. If the drafter is the only one who can determine what the abbreviations mean in a bill topic, then it is a meaningless bill topic. It is

recommended that the drafter use no more than two abbreviations in a bill topic.

(14) Focus on the subject matter and who the bill affects. Think about who would look for this particular bill rather than focusing on describing how the bill does something.

(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 insurance in the bill topic. All Medicaid bills should have 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. Summaries should be written *after* the bill or concurrent resolution is drafted and should attempt to state what the bill would accomplish.

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 the 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 will 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.

(4) A bill summary for a bill that amends current law should describe how current law will be *changed*, 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 is not necessarily the order in which the changes appear in the body of the bill), and 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. To give another example, the bill summary could list changes made by the bill in the order in which the affected events are likely to occur (for example, 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. For example: "**Section 2** of the bill increases the state sales and use tax by one-fourth of one percent effective November 1, 1995.". In some 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.

(9) The drafter should avoid overusing the word "provides" in the bill summary. Instead, the drafter should use more specific words 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 and should avoid sounding overly repetitive or mechanical.

(10) 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 such as "**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 such as "**Section 1** of the bill makes legislative findings and declarations.".

(11) Bill summaries submitted with drafts prepared outside the Office of Legislative Legal Services should always be checked to verify that they reflect what the bill actually does.

(12) 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

In October 2009, the OLLS Committee on Procedures studied whether the OLLS should begin updating bill summaries after bills are introduced in the General Assembly. This committee recommended to the OLLS and to the Committee on Legal Services that the OLLS should update bill summaries after a bill is passed on 3rd reading in the house of introduction. The Committee on Legal Services approved the proposal and the OLLS 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 Rule 29 reads as follows:

Joint Rules of the Senate and House of Representatives
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.

(b) The summary shall not appear on the enrolled copy of the measure.

(c) This summary shall not be treated as a statement of legislative intent.

The Committee on Legal Services directed that the OLLS 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 measures states that the bill summary applies to the bill as introduced, does not reflect any amendments that may be subsequently adopted, and that if this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov/. 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. **The Office's policy is that an updated bill summary should be prepared so that it will be available 24 hours prior to the first committee hearing in the second chamber.**

The drafter must follow these guidelines when updating bill summaries:

(1) The updated bill summary needs to 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 ~~strikes~~ 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 ~~strikes~~ and SMALL CAPS in the

body of the bill. The ~~strikes~~ and *italics* typeface attributes are for the benefit of the legislative editor reviewing the updated bill summary language and will be removed prior to the summary being published on the website.

(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 CLICS e-mail 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" on OLLSnet. 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. Its wording cannot be varied since it is fixed by the constitution and statutory law. It must be included before introduction because failure to include it could invalidate an entire act. The prescribed form, placed in one line immediately preceding the first section of the bill, is as follows:

> "*Be it enacted by the General Assembly of the State of Colorado:*"

2.5 BODY OF A BILL

2.5.1 Prohibition on Introduction by Title Only

Section 19 of article V of the state constitution was amended in 1950 to provide in part that "No bill shall be introduced by title only". This provision specifically prohibits a former practice in the General Assembly (prior to 1950) that allowed bills to be introduced with a title, the enacting clause, and the word and figure "SECTION 1.". The body of the bill as

thus introduced by title was then "filled in" even, in some cases, after the fifteen-day limitation on the introduction of bills expired. (The fifteen-day limitation on introduction of bills was also deleted in the 1950 amendment to article V of the state constitution.) Now, every bill must be introduced "in full", that is, with a complete text.

2.5.2 Sectioning and Paragraphing - Terminology

Colorado Revised Statutes is divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXX. 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 "5-6-301", "5" is the *title* number, "6" is the *article* number, and "301" is the *section* number within the article and title. The three numbers combined together as "5-6-301" 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*. In this example ("5-6-301"), the section is found in part 3 of article 6 of title 5.

In drafting new material, short sections should be used. 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. Short sections are also easier to index.

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 are not amended by bills.

Nonetheless, 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, then 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 very few instances, subsections will also contain headnotes for clarity and easy reference. For example, see subsections (4) and (5) of section 8-73-108, 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 C.R.S. These amending clauses cite the existing law to be amended or added to and refer to "Colorado Revised Statutes".

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 such cases, 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** ...".

2.5.4.1 Amending Current Statutory Material

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

SECTION 1. In Colorado Revised Statutes, **amend** 32-7-128 as follows:

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

SECTION 2. 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 3. In Colorado Revised Statutes, 32-1-103, **amend** the introductory portion as follows:

2.5.4.2 Adding New Statutory Material

2.5.4.2.1 New Sections

New sections may be added either at the end of a statutory title, article, or part or they may be 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 1. In Colorado Revised Statutes, **add** 10-3-911 as follows:

or

SECTION 2. In Colorado Revised Statutes, **add** 10-3-911, 10-3-912, and 10-3-913 as follows:

If adding new sections at the end of an article or part, the new sections would be numbered 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.

2.5.4.2.2 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 1.** In Colorado Revised Statutes, 7-30-104, **add** (3) as follows:

or

> **SECTION 2.** 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.

2.5.4.2.3 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 1.** 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 1.** In Colorado Revised Statutes, 8-73-107, **amend** (1)(c) and (1)(d)(II); and **add** (1)(k) as follows:

2.5.4.2.4 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 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 1.** 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.

If the new article fits most logically *between* two existing, consecutively numbered articles (for example, as in the case of a new licensing law for inhalation therapists, which probably should be placed in alphabetical order within the medical category of title 12, "Professions and Occupations"), it can be designated with a decimal point (in the example, the new article would contain sections numbered 12-35.5-101, 12-35.5-102, 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 2-2-1701, 2-2-1801, *et seq.* Because the original design of the computerized statute data base did not contemplate the practice, *new parts cannot be added by means of decimals*.

Whenever adding a new part to an existing article, it will be 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 such amendments are 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 1.** In Colorado Revised Statutes, **add** part 5 to article 4 of title 2 as follows:

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 new article or part may be added and existing, conflicting law repealed. A good example of the use of this method was the "Colorado Municipal Election Code of 1965", in which the existing laws on municipal elections were repealed and an entirely new code consisting of 185 sections was adopted.

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 the subject matter of which 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 repealing clause should be included in the bill.

2.5.4.3 Repealing and Reenacting Existing Law

Until the 1991 regular session, Joint Rule No. 21 of the Senate and House of Representatives allowed a deviation from the capital letter and strike type format of amendatory sections in cases of complex and extensive amendments. In 1991, Joint Rule No. 21 was amended to eliminate this practice because departure from the capital letter and strike type format too often caused reader confusion. The current policy favors showing the reader new material in capitals and omitted material in strike type as a general rule. Accordingly, the prior practice of 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. However, the 1991 amendment allows use of repeal and reenactment when the interests of better understanding of a bill are served by its use.

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

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

2.5.4.4 Repealing Existing Law

The general rule that the reader should see new material in capitals and omitted 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 1.** 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 2.** 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 1.** In Colorado Revised Statutes, **repeal** article 11 of title 26.

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. Example:

Preferred:

> **12-47.1-519. 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 regulations of the ~~commission~~ DIRECTOR. The license period for a renewed license shall be one year. In

addition, the ~~commission~~ DIRECTOR shall reopen licensing hearings at any time at the request of the director, Colorado bureau of investigation, or any law enforcement authority. The ~~commission~~ DIRECTOR shall act upon any such application prior to the date of expiration of the current license.

(2) ~~An application for renewal of a license shall be filed with the commission no later than 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.~~

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

(4) Renewal of a license may be denied by the ~~commission~~ DIRECTOR for any violation of this article 47.1 or article 19 of title 18, or the rules and regulations promulgated pursuant thereto, for any reason which would or could have prevented its original issuance, or for any good cause shown.

Alternative:

12-47.1-519. 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 regulations of the ~~commission~~ DIRECTOR. The license period for a renewed license shall be one year. In addition, the ~~commission~~ DIRECTOR shall reopen licensing hearings at any time at the request of the director, Colorado bureau of investigation, or any law enforcement authority. The ~~commission~~ DIRECTOR shall act upon any such application prior to the date of expiration of the current license.

~~(2) An application for renewal of a license shall be filed with the commission no later than 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.~~

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

~~(4)~~ (2) Renewal of a license may be denied by the ~~commission~~ DIRECTOR for any violation of this article 47.1 or article 19 of title 18, or the rules and regulations promulgated pursuant thereto, for any reason which 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.

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.

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 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 other parts of title 26 or in the "Administrative Organization Act of 1968", these provisions also would be repealed or amended since the purpose of the bill was to abolish the commission. For further information, please see section 2.5.5 below titled "Conforming Amendments".

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

2.5.4.4.1 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 as provided in this manual.

2.5.4.4.2 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 such repeal. In cases of such "future repeals", the repeal provision should be set forth in the statutes. In the case of the future repeal of an article or part, the repeal is set forth in a separate section, and in the case of the future repeal of a section or a subdivision of a section, the future repeal is, if possible, set forth as a separate portion of such section or subdivision. Thus, the future repeal of an existing section of law would be accomplished as follows:

> **SECTION 1.** 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 ....
>
> (2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2015.

Future repeals are used for several purposes, e.g., to require the department of regulatory agencies to review, pursuant to section 24-34-104, a regulatory entity prior to its repeal (a "sunset" review - see section 6.3 of this manual titled "Sunset Law"); to force the legislature itself to consider whether a statute ought to continue; and 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 of such provisions 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. 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.

2.5.4.4.3 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 is necessary to identify clearly the rules to be repealed. Such 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.

2.5.4.5 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 such a recodification is a clearer and more logical 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 such a 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 such circumstances, the drafter may use an alternative format that shows amendments in the form of strike type and capital letters and that identifies the source of relocated provisions. Examples of this alternative format may be found in the 1993 Session Laws at chapter 167 (regulation of fraternal benefit societies), chapter 183 (initiative and referendum process), and chapter 234 (regulation of racing), and in the 1994 Session Laws at chapter 337 (recodification of title 42, concerning vehicles and traffic). 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; however, 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, it is recommended that those portions requiring a different section number 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 of this manual.

2.5.4.6 Recreating and Reenacting Former Law

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

> **SECTION 1.** In Colorado Revised Statutes, **recreate and reenact, with amendments,** part 2 of article 5 of title 39 as follows:

The new material should be capitalized.

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.

2.5.5 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, or substantially amended, the drafter should always perform a computer search of the statutes to locate all other statutes that refer to the repealed 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, conforming amendments would be so numerous as to unduly burden or disrupt the legislative process, a section that allows the Revisor to prepare conforming amendments may be added to the bill.

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 requires 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.

2.5.6 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 has been shortened to the following:

> x-xx-xxx. The short title of this [C.R.S. subdivision] is the "_____ Act".

2.6 SPECIAL CLAUSES

There are a number of special clauses that may be included in bills depending upon the nature of the particular bill. These various clauses are always placed in separate sections at the end of a bill. An explanation of those most generally used, and the reasons for including or omitting them from particular bills, are outlined below.

> 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.

A saving clause is usually not included 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, a specific clause should be inserted. However, extreme care must be used 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 savings clauses:

> **4-7-703. Savings 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. Savings 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. Savings 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 such 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) No person who, on or before August 1, 1959, holds a certified public accountant certificate previously issued under the laws of this state is required to secure an additional certificate under this article 2 but is otherwise subject to all the provisions of this article 2. Such certificate previously issued is, for all purposes, considered a certificate issued under this article 2.

The example below in section 12-8-109, C.R.S., is 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. Section 12-8-109 (1), C.R.S., addresses the validity of the rules adopted by the predecessor board, and section 12-8-109 (2), C.R.S., addresses 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, which are continued and concluded under such 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 in any manner 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 under or 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.

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 any provision 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 any provision of 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 10.
>
> This article 4 is intended to be in addition and supplementary to other laws of this state, and does not repeal any of sections __ and __.

Such clauses are included 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

A severability clause provides that if any part of an act is held unconstitutional, the remainder will not be affected. It is a type of saving clause in that it "saves" parts of an act if any other parts of the act are declared unconstitutional by court action.

Under article 4 of title 2, a general severability clause is provided 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 (*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 severability clause is sometimes included, especially in long or controversial bills or when a member specifically requests its inclusion in a bill. However, a severability clause should not be used indiscriminately since it serves no particular purpose in most bills.

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

> **X-X-XXX. Severability.** If any provision of [this act] or the application thereof to any person or circumstance is held invalid, such 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:

> **29-8-139. Nonseverability.** If any provision of this article 8 is held invalid, such invalidity invalidates this article 8 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 specifically addresses effective dates of acts, though other provisions of the constitution have a bearing thereon.

> **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 does not have a specified 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 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 on which 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 on which 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 him or her; 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 contains 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".

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. (*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 manual).

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 (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.

2.6.3.3 Specifying an effective date

The drafter should determine from the sponsor the date on which 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.

However, the better practice on most bills is to provide that they take effect on a definite date subsequent to the passage of the bill. An interval between the passage and effective date of a bill allows state agencies, local governments, the courts, and individuals to be informed of the new law or the amendments 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; however, if research shows that merchants keep their records on a monthly basis, the effective date section could provide that the changes take effect on the first day of the month following the passage of the act.

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, 2003.

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 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, whether a bill becomes effective may be conditioned (contingent) upon passage of another bill. For example, 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. Examples of conditional effective date clauses, both for bills that include safety clauses and those that do not, appear in Appendix K of this manual.

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. Also, the provision can be subsequently amended 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, 2011", or "This section is repealed, effective July 1, 2011".

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 is large enough to accommodate only fifteen lines of income tax check-offs. 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 will take effect as follows:

> **39-22-3802. Voluntary contribution designation - procedure - effective date.**
> (2) This part 38 shall take 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 event or condition should be described clearly and objectively 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 when the event occurs or the condition is met, as provided 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.

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. An applicability section should be added to any bill that regulates conduct or affects contracts or contractual relationships. The following are some common applicability sections:

> **SECTION 1. Effective date - applicability.** This act takes effect July 1, 2003, and applies to offenses committed on or after said date.
>
> **SECTION 2. Applicability.** This act applies to fiscal years beginning on or after July 1, 2003.
>
> **SECTION 3. Effective date - applicability.** This act takes effect July 1, 2003, and applies to causes of action filed on or after said date.
>
> **SECTION 4. Effective date - applicability.** This act takes effect July 1, 2003, and applies to civil actions pending on said date and to civil actions commenced after said date.

Drafters should be advised that use of 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.

Applicability clauses are also frequently used 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.

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 his or her 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 of this manual.) A bill that does not contain 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 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 (the period that is allowed 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 there are certain bills that may need to take effect on July 1 or before. These could include bills 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 that a bill be prepared without a safety clause, a petition clause that indicates the act is subject to petition and explains the alternate effective date should be substituted.

2.6.5.2 Points of Importance Regarding the Safety Clause

(1) An act containing a safety clause cannot be referred to the people by petition. Another way of saying this is a bill with a safety clause is not subject to the citizen's right to file a

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[2] For information on effective date and applicability clauses, see "2.6.3 Effective Date Clause" and "2.6.4 Applicability Clause" in this Chapter.

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 contain a safety clause to themselves by petition is often termed a "recision referendum" or an "initiated referendum". To our knowledge, no act of the General Assembly has been referred to the people by petition of the people since 1932 when an increase in the tax on oleomargarine was referred.

(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. In recent years, there has been some debate about the use of the safety clause and some members have argued that the General Assembly should not use the safety clause as often as has previously been the case.

(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 contain the 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 which are referable to the people by petition 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 (*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, a safety clause must be included in the bill.

(8) The initiative and referendum provisions of the state constitution provide 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 he 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 his 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 contains a safety clause, it is always the final section of the bill. The following are examples of safety clause provisions:

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[3] The right is recognized in section 1 (3) of article V of the Colorado constitution.

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 he or she accepts the fact that a safety clause is necessary, then a safety clause should be added to the bill. The bill will take effect when the Governor signs it, when it becomes law without his or her 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, and safety.

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.

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, and safety.

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.

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 a general "petition" clause (or "no safety clause") should be added at the end of the bill in place of the safety clause. These examples can be used to fit the circumstances presented by most bills. 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 following adjournment of the session. However, 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. This usually occurs 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 (*projected effective date inserted by the macro*); 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 any act subject to petition clause, the drafter needs to think very carefully about whether or not 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 for proponents to file a referendum petition would occur, 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 a petition clause was used, the article in the bill would actually repeal on July 1, 2016, pursuant to the statute before the 90-day period runs on August 10, 2016. In this instance, the petition clause will not work if the provision of law will be repealed before the change to that provision even takes effect and the bill would contain a significant flaw. Therefore, drafters and editors are urged to use caution and to think carefully before selecting an act subject to petition clause. When reviewing amendments to introduced bills, drafters and the OLLS Publications Team should also be aware of potential issues with the effective date of the contents of the bill and the effective date stated in the petition clause creating a problem because of a substitution of a petition clause in place of 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 election date or the announcement of the vote has occurred if a petition was filed. If you find this occurring in a bill, the bill should have a safety clause.

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 applicability provision can be included 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 (*projected effective date inserted by the macro*); 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 *fixed date* ***subsequent*** to the expiration of the ninety-day period following adjournment, then the following clause should be used 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.

When 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 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 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, an act or part of an act of the General Assembly can be referred 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 a bill to be referred 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, 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."

Also, 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 rules for properly referring to a proposition or an amendment.

2.6.6.1.2 Referendum Clause - with Effective Date - with Applicability

Since a bill cannot become effective until it is approved at the next general election, do 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 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 same base referendum clause is used 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 10.2.1 of this manual for more information about this language.

2.6.6.2.1 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 the state sales and use tax be increased ninety-one million, two-hundred and sixty thousand dollars annually, as part of a change to the Colorado Revised Statutes raising the state sales and use tax rate by one-tenth of one percent?" 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, if applicable, and define any necessary terms.

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 necessary to commit the crime, either an act or an omission. The elements may also include a result, like bodily injury. Finally, an element can include a fact 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. A court may then imply a mental state in that case. See section 18-1-503, C.R.S., and *People v. Moore*, 674 P.2d 354 (Colo. 1984). Usually a court will imply 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:

- "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 statutory definitions have not been modified for gender neutrality).

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 implied, 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, you may think you need to include recklessly, knowingly, and intentionally, but you only need to include the lowest mental state. When a crimes 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, do 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 (i.e. class 1-6 felony, level 1-4 drug felony, class 1-3 misdemeanor, level 1&2 drug misdemeanor, or petty offense). 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 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 paragraph (a) of this subsection (3), 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, or petty offense 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, upon conviction. 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.

When referring to a specifically defined crime, in title 18, C.R.S., of the "Colorado Criminal Code", the word "commits" is used. For example:

> ... commits second degree official misconduct ...

When working with a penalty clause outside title 18, C.R.S., specific section references should be used. For example, in the case of a specifically defined crime:

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

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 words "is guilty of" are preferred. For example:

> ... is guilty of a misdemeanor and, upon conviction thereof, 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.

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

> ... is guilty of a misdemeanor.

The penalty for a class 1 petty offense is set forth in section 18-1.3-503, C.R.S., following the words "upon conviction". Therefore, when adding a class 1 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 following language should be used:

> ... is a class 1 petty offense.

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

> ... is a class 1 petty offense and shall be punished as provided in section 18-1.3-503, C.R.S.

When setting out the penalty language for a class 2 petty offense, the words "upon conviction" must be included in the section setting forth the penalty since section 18-1.3-503, C.R.S., provides that the penalty for such convictions be specified in the section defining the offense.

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 and encompass 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.

2.6.7.1.4 Crime-specific Definitions

The drafter needs to define any terms that are not initially defined in the definitions section for the part, article, and title.

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., and S.B. 77-549, which would have provided a special procedure for creating a regional service authority in the Denver metropolitan area. Language justifying this type of bill may be modeled on the language contained 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 district as provided in this article 9 because of a number of atypical factors and special conditions concerning same.

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 contains *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 containing appropriation clauses but prior to sections of the bill containing 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 containing appropriations but prior to the accountability clause section.

The title of any bill containing 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

include this trailer in the title of the bill to indicate the addition of a post-enactment review requirement.

An accountability clause and the related legislative declaration should be included 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 are often called upon to make a statutory provision in a bill take effect (or to prompt its 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 has the responsibility of 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 *e-mail 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 under the "clause options" button in WordPerfect. If the drafter believes that he or she needs to deviate from the standard language, he or she should consult with the revisor of statutes.

Example:

This [identify the provision of law such as section/subsection/paragraph] [takes effect/is

repealed] **when** [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 when the condition specified in this** [section/subsection/paragraph] **has occurred by e-mailing the notice to revisorofstatutes.ga@state.co.us. This** [provision of law] [takes effect/is repealed] **upon the date identified in the notice that the** [triggering event] **occurred or upon the date of the notice to the revisor of statutes if the notice does not specify a different date.**

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 Statement and a Legislative Intent Statement

It is important that a drafter understand the distinction between a legislative declaration statement and a legislative intent statement. A *legislative declaration statement* 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 statement indicates the problem 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 Statement

A drafter should evaluate the purpose for inclusion of a legislative declaration statement or a legislative intent statement. Is the statement included for the purpose of making people feel good (i.e., a statement akin to "motherhood and apple pie")? Is the statement desired for no real purpose other than to garner support for the bill? Is the statement 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 answers to these questions are 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. While 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, such statements 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 legislative declaration statements or legislative intent statements 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 SB 00-181 in Session Laws of Colorado 2000, p. 492. Like persuasive or factual statements, historical statements must be accurate. Legislative declaration statements 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. Statements may be included 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. For examples, see sections 26-1-126.5 and 2-4-215, C.R.S.

2.7.3 Role of Legislative Declaration and Legislative Intent Statements

As a general rule, legislative declaration 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". *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. See Sutherland's Statutory Construction, sec. 20.13 (4th ed). However, there have been cases where courts have construed legislative declaration or legislative intent statements as creating rights or creating entitlements to programs. Litigation has also been based upon value statements, goals, or promises contained in legislative declarations. 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 Declaration 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 any kind of 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 or legislative intent statement.

Use semicolons at the end of paragraphs in legislative declarations or legislative intent statements, unless the paragraph contains more than one sentence in which case, use a period.

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.

A fully executed compact is, simultaneously, three things (usually):

1) **A contract between at least two states,** 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 your 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 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 just 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 figure out, precisely, if a draft 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 (which you should clarify in no uncertain terms to both the sponsor and any legislator who tries to amend it). If it's really just a model law, don't codify it as a part in article 60 of title 24, and it may be altered or amended however the sponsor or the General Assembly wishes, and should not be referred to as a compact.

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AMENDMENTS TO BILLS

3.1 INTRODUCTION

Amendments to bills are of two types:

(1) **Committee amendments** - amendments proposed by the committee of reference to which a bill is referred. These amendments, if adopted by the committee, are contained in a final committee report; and

(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.

Committee amendments and floor amendments may be prepared by the committees and the members themselves, or in the case of floor amendments by the amendment clerk, without assistance from the Office of Legislative Legal Services; however, in most cases, members request the Office to prepare proposed committee amendments and floor amendments. 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 for preparing bills.

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 which 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 related existing law may have to be changed to conform to the amendment.

Care should also be taken to avoid errors that can be created 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 references to the renumbered provision.

The drafter of the bill is responsible for checking amendments adopted 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 between sections and inconsistencies. 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 section of the manual is directed toward amending bills, it will generally apply to 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 and 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 (that is, 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) or to a prior amendment or committee report that is still pending adoption. When an amendment is made to a prior amendment in the House or the Senate (either by another committee or on the floor), the amendment is made to the original committee report rather than to the committee report as 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 prior amendments to a bill as printed in the committee report are to be amended, the drafter must first determine where the bill is located in the legislative process. Always assume that prior committee amendments will be adopted on second reading. The Colorado Legislative Information and Communications System (CLICS) should be used to locate the status of the bill. If the drafter prepares a committee amendment or second reading amendment for a bill that is in the house of origin, the printed bill and any applicable prior committee amendments should be amended. If the drafter prepares a third reading amendment in the house of origin, the engrossed bill should be amended. If the drafter prepares a committee amendment or second reading amendment in the second house, the reengrossed bill and any prior committee amendments in that house should be amended. If the drafter prepares a third reading amendment in the second house, the revised bill should be amended.

Note: It is rare that a drafter is requested to prepare a third reading amendment in either house. Generally, third reading amendments are technical drafting amendments. If the drafter prepares an amendment for third reading in the first house or for a bill pending in the second house and that bill has not been previously amended, the printed bill will be the only version available. For example, a second reading amendment in the second house to a bill that had not been previously amended would be prepared using the printed bill; however, the amendment would still refer to the bill as the "reengrossed bill".

3.3 GUIDELINES FOR 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, refer

only to the page number and line number of the page where the amendment is made or inserted. It is not necessary to refer to the section number of the bill. Repeat the page number for each 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".

(2) For the amendment instructions, drafters should:

> Strike "word(s)".
>
> Strike "word(s)"/line(s)/page(s) and substitute "word(s)".
>
> Strike "word(s)"/line(s)/page(s) and substitute:
> <Hard Return>
> "Text.". (if "Text" is a new amendment instruction or to show formatting, such as a Tab)
>
> After/before "word"/line(s)/punctuation insert "word(s)".
>
> After/before "word"/line(s) insert:
> <Hard Return>
> "Text.". (if "Text" is a new amendment instruction or to show formatting, such as a Tab)
>
> After the period (at the end of a subsection, paragraph, etc...) add "The sentence(s).".

(3) Punctuation marks that are part of the amended material are placed inside the quotation marks when quoting the amended material. Punctuation marks that are not part of the amended material are placed outside the quotation marks. For example:

> Amend the Transportation and Energy Committee Report, dated February 15, 1991, 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 THE PROVISIONS OF 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 THE PROVISIONS OF 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 THE PROVISIONS OF SECTION 39-26-114 (1)(a)(XII) SHALL NOT APPLY TO THE TAX ON MOTOR VEHICLES AND RELATED ITEMS IMPOSED PURSUANT TO THE PROVISIONS OF THIS SUBSECTION (1).".".

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

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

(5) Unlike references to several statutory sections in succession where the word "to" includes both the first and last section numbers mentioned (see section 2-4-113, C.R.S.), the word "through" is used for page and line references in amendments and conference committee reports to assure inclusion of the final page or line number mentioned.

(6) If the drafter prepares amendments that are to be inserted in the same location in a bill, i.e., same page and line number, the drafter should place the amendment that the drafter intends for the enrolling room to insert first *after* the line where the amendment is to be placed, and the second amendment *before* the line that follows the inserted amendment. 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) 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 as introduced would result in confusion as to what the members were passing.

(8) If an amendment is made to a committee report in the House or in the Senate, give the name of the "Committee Report" (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, 2009, page 4, strike lines 9 through 31.

(9) 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.

(10) To amend a proposed committee amendment, the drafter should state that the amendment amends the proposed amendment, cite the storage number for the proposed amendment, and give the page and line number as for any other amendment. For example,

"Amend proposed committee amendment (HB1137_L.001), page 1, line 14. . ." (Note: See examples in Appendix C of this manual.)

(11) In an amendment to another amendment, such as a floor amendment to a committee report, references to specified 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. (Note: See the example for paragraph (3) above and Appendix C of this manual.)

(12) When an amendment in a bill changes a phrase and replaces it with a different phrase and the phrase appears over two adjoining lines in the bill, instead of writing a separate instruction for each line, the drafter has the discretion to write the change in one instruction instead of writing two separate instructions for each line. For example, if the phrase "beyond a reasonable doubt" was being changed to "clear and convincing evidence" and "beyond a" is on one line and "reasonable doubt" was on the next line, the amendment could be written as follows:

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

(13) **Repetitive Amendments.** With some regularity, we draft an amendment that changes a word, term, or phrase that occurs repeatedly in the bill. Instead of identifying each place it occurs in the bill and writing a separate instruction for each occurrence, an attorney can identify each occurrence in a single instruction. In the amendment instruction, the language change comes first, followed by the locations of the change using **bold** for each new page number. The instruction should be placed at the end of the amendment after any single change instructions but before the title change. Attorneys have the discretion when determining when to use this format. There is no threshold requirement for when the format must be used. 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.

It is likely that if you change a term many times there will be an instance when the term has a comma, semi-colon, colon, apostrophe, or period attached. Our amendment drafting standard requires that we include with the term any punctuation that is attached to a word that is subject to an amendment. When using the format for repetitive amendments, you do not attach the punctuation. However, the punctuation will still remain in the bill, so attorneys will need to be careful in reviewing preamends to ensure that the punctuation remains. This allows for more frequent use of the format.

Referring to multiple lines could be problematic if there are multiple references to the same term on those lines.

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.

3.3.2 Guidelines for Drafting House Amendments - Settled Questions

The House of Representatives follows the rule that once a question has been "settled" by the body it cannot be given further consideration except through formal reconsideration. The application of this rule means that during second reading, a committee report (and any other kind of floor amendment) cannot be amended after it has been adopted. As a result, questions and problems have arisen about drafting amendments for the House.

The following guidelines should be followed when drafting House amendments:

1. When drafting a House amendment, in light of the potential for a settled question being raised, 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 issue is determined to be a settled question, the amendment will be ruled out of order and the amendment sponsor will not be allowed 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. *Do not* make amendments to *both* the printed (or reengrossed) bill *and* a prior committee report in the same amendment.

2. If the drafter prepares an amendment to a proposed amendment for committee or for second reading, the drafter should inform the sponsor that the amendment to the proposed amendment needs to be offered before the first amendment is adopted.

These special guidelines apply only to House amendments.

3.3.3 Drafting Senate Amendments

Unlike the House of Representatives, the Senate does not follow the settled question rule, as 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, 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)".

Also, in the Senate during second reading, a committee report (and 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 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 and committee of reference amendments to bills. When the Committee of the Whole finishes work for the day, it rises and reports the actions taken. 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 apply in both houses. They are prepared by the amendment clerks of both houses; however, drafters are sometimes asked to assist the amendment clerk in connection with such amendments. Generally, amendments to the Committee of the Whole Report are for the purpose of showing that a previously offered amendment passed or did not pass. But note that, 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.

3.5 SINGLE SUBJECT - ORIGINAL PURPOSE - TITLE AMENDMENTS

When an amendment is prepared, the drafter should always check to assure 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. 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.

Section 21 of article V 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 be familiar with those provisions.

In certain cases, a title may be amended 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*. 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". 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 "GRAPEFRUIT GROWERS". The single subject is "fruit" and the statements following the comma give notice of and clear expression to the specific contents of the bill. Adding "grapefruit growers" is consistent with the single subject and it 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 assuring that the single subject and change of purpose sections are not violated. Strict compliance with this rule could result in a challenge to the amended title used in the preceding example; it would be argued that the addition of "grapefruit growers" *broadens* that title.

A title may be narrowed by adding words of limitation to the subject. There have been occasions where drafters have attempted to narrow a title by inserting, at the beginning of the title, the specific sections or subsections to be amended by the bill; however, the drafter should be cautioned that using this approach may not provide the result of narrowing the title since the section or subsection can be amended to include items unrelated to the original purpose of the bill. In addition, citing a list of specific C.R.S. sections at the end of the title results only in explaining the effect or purpose of the bill rather than limiting the subject matter. 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.

While the foregoing paragraphs indicate that 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 he or she determines that the amendments violate either provision. Amendments that violate either provision may subject the bill to a legal challenge. Drafters should always consult with team leaders or with the Director when there are concerns about the single subject or original purpose or about a title amendment.

The change of purpose provisions *apply only to bills*. Pursuant to section 1 (5.5) of article V of the state constitution, which was adopted at the 1994 general election, the single subject rule

applies to proposed constitutional amendments.

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", dated December, 1971, an NCSL LEGISBRIEF that discusses "What is Germane", and a memorandum concerning amendment and title questions, dated April 29, 1994.

3.6 CHECKING AMENDMENTS

The drafter of a bill needs to check the amendments contained in a committee of reference report and any second or third reading amendments added to a bill by the House or the Senate. The publications team will send a "To Do" e-mail message to the drafter of the bill alerting the drafter that the bill has been amended. If the bill has been amended by a committee, the drafter reviews the preamended version that has been prepared by the enrolling room along with looking at the committee report and the printed or reengrossed bill. If the bill has been amended on second or third reading, the drafter reviews the applicable engrossed, reengrossed, revised, or rerevised version of the bill.

The purpose for checking the amendments is to identify drafting errors or inconsistencies in the bill that may have occurred as a result of amendments made to the bill. While a drafter may be tempted to conclude that the amendments must be fine since he or she 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 our work and on the body's work.

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

- Was the amendment properly enrolled (i.e., 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, 2010.
>
> **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.

- 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 the correct language was used or that the change does not create a timing issue. 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 election date or the announcement of the vote has occurred if a petition was filed. If you find this occurring 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 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?
- 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 committee add something that arguably is in conflict with another statute or is unconstitutional?
- Are there internal inconsistencies in the bill?

If the drafter finds a mistake or error in the bill, there are generally two possible courses of action: Fix it by correction schedule or fix it by amendment. If the mistake is minor, such as a misspelling or an incorrect amending clause, the mistake may be something that can be fixed on the correction schedule (often referred to as "fixing it by C.S."). Items to be fixed by C.S. can be noted in the reply response sent back to the publications team. Items noted on the correction schedule will be fixed at the time the bill is enrolled. Not everything can be fixed by the correction schedule, so the drafter should consult with the publications team about the issue.

If the problem cannot be fixed using the correction schedule, the drafter should explain the problem to the sponsor of the bill and discuss correcting the problem by an amendment at

the next stage of the process or at a later stage of the process. Drafters need to be cognizant that the sponsor may have reasons for not wanting to fix the problem at the next stage of the process. For example, a bill sponsor might want to avoid fixing a problem with the bill on third reading since they have to get permission to offer a third reading amendment. If votes are close on the bill, they may prefer to fix the problem in the second house. Or, if the bill is in the second house, a bill sponsor might prefer to fix a problem with a second or third reading amendment to avoid 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 the amendment language.

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.

Example Committee Amendment

SB256_L.013

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Education.

SB09-256 be amended as follows:

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

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

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

7 Page 15, strike lines 5 through 25.

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

Example Floor Amendment

HB1205_L.008 Amendment No. _____

HB09-1205

HOUSE FLOOR AMENDMENT

Second Reading BY REPRESENTATIVE Pace

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

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

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

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; **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.

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

CONFERENCE COMMITTEE REPORTS

4.1 INTRODUCTION

A conference committee is the method by which the two houses, in any case of difference on any subject of legislation, attempt to resolve such difference. Conference committees are appointed pursuant to Joint Rule No. 4 of the Senate and House of Representatives, a portion of which is quoted 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.

Joint Rule Nos. 5, 6, 7, and 8 also concern conference committees and reports of such committees. The drafter should be familiar with these rules, but they are not essential in the actual drafting of conference committee reports.

Conference committee reports are the most exacting phase of legislative drafting. A conference committee report is the last opportunity to make changes to a bill before the bill is enacted by the General Assembly. If a conference committee report contains substantive or technical errors, the report cannot be directly amended to correct the errors. (See Joint Rule No. 4 (h) for the correction of an error by means of a second report.) Therefore, it is very important that the drafter makes sure that a conference committee report is complete and correct when it is signed by the conferees. The following explanation and the examples of various types of conference committee reports contained in Appendix D of this manual will serve as a basis for the drafter in understanding the technicalities and mechanics of such reports.

After a bill is adopted by the second house, the bill is returned to the first house (the bill's house of origin) if the second house made amendments to the bill. The house of origin must act on the amendments of the second house in order to complete the final enactment of the bill. The house of origin may concur or may refuse to concur in the amendments of the second house. In the event the house of origin refuses to concur in the second house amendments, there is immediately created "a difference between the two houses on the subject of legislation". The amendments of the second house are the basis of this difference. Therefore, the amendments of the second house are the only matters that may be considered by a conference committee in its report (except as otherwise noted below).

Joint Rule No. 4 (d) states: "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. . . ." Accordingly, if given this consent, the conference committee can consider any phase of the bill before it, can recommend new provisions concerning the subject matter of the bill, or can even write a new bill relating to the same subject matter. Joint Rule No. 4 (i) specifically permits a conference committee to consider matters beyond the scope of the differences before permission is granted but requires the conference committee to obtain such permission before the report is signed.

Simply stated, a conference committee may:

(1) Recommend the adoption or rejection of each amendment made by the second house or

recommend changes in or substitutions for those amendments, but to no other provisions of the bill; or

(2) If the conference committee has the consent of a majority of members elected to each of the two houses to report on matters other than those that are at issue between the two houses, recommend amending any provision of the bill, recommend new matter relating to the subject matter of the bill, or even recommend an entirely new bill relating to the same subject matter.

If a conference committee decides to accept the bill as amended in the second house, it may submit a report that adopts the rerevised bill (see the applicable sample in Appendix D of this manual). However, a conference committee report is not necessary in such case. As a procedural alternative, the first house may instead act to concur in the second house amendments, dissolve the conference committee, and repass the bill as amended in the second house. (The second house may then dissolve the conference committee.) Similarly, if a conference committee decides to accept the bill as it left the first house, it may submit a report that adopts the reengrossed bill, or, as a procedural alternative, the second house may recede from its position on the bill. (See Joint Rule Nos. 5 and 6.)

In drafting a conference committee report for a bill in which the second house has adopted an amendment striking everything below the enacting clause (a "SEBEC" amendment), the entire bill is placed in issue and the conference committee can consider any phase of the bill. The Office view has been that where the second house has adopted an amendment striking everything below the enacting clause, the entire bill is at issue and a conference committee could add things to the bill that were not ever part of the bill as long as the contents being added fit under the title of the bill, and a conference committee could even rewrite the bill as long as the rewrite fits under the title. In effect, the title of the bill defines the scope of the differences between the two houses. In such an instance, the drafter does not need to draft the conference committee report to show scope and, procedurally, neither house needs to get power to go beyond the scope of the differences.

If the conferees want to amend the same C.R.S. section in two different ways and part of the amendment is within the scope of the differences and part is beyond the scope of the differences, the question arises about whether to have two separate amending clauses in the bill. If possible, the drafter should sever the amendments and write two amending clauses identifying the amendments as within or beyond scope. However, sometimes it is too confusing or difficult to sever the amendment, in which case the drafter should put both changes in the beyond the scope portion of the report and explain to the conferees that for ease of comprehension the portion of the amendment that is within the scope was combined with the portion of the report that shows the beyond the scope portion.

If a title of a bill was amended in the second house (the rerevised bill) and the conference committee report is being drafted to amend the reengrossed bill, the title that should be used in the conference committee report is the title of the reengrossed bill since that is the document being amended.

A conference committee report can only include amendments adopted by the committee. The drafter of the report cannot include technical amendments in a conference committee report unless the committee has agreed to specific technical changes the drafter brings to the

committee's attention or the committee agreed to include any technical changes the drafter finds when preparing the report. Technical changes are subject to the same scope of the differences considerations that apply for substantive changes.

4.2 DRAFTING A CONFERENCE COMMITTEE REPORT

4.2.1 Form of the Report

Conference committee reports are prepared as amendments to either the rerevised bill or the reengrossed bill. The drafter should use the rerevised bill unless amending the reengrossed bill is simpler. Sample conference committee reports covering most situations are contained in Appendix D of this manual, and the drafter should carefully follow the form of the appropriate sample.

4.2.2 Attendance at the Meeting

The drafter of the bill or another attorney from the Office should attend the meeting of the conference committee. See Joint Rule No. 4 (e). When a bill is assigned to a conference committee, a conference committee packet is assembled and a file is maintained for each bill in conference committee. The drafter of the bill will be informed when and where the conferees will meet. The drafter should have copies of the rerevised and the reengrossed bills to work with at each conference committee meeting.

4.2.3 Preparing a Draft Conference Committee Report

Sometimes a drafter will be asked to prepare a draft conference committee report for consideration by the conferees. To ensure that such a draft is not mistaken for a report approved by the conference committee, the draft should be clearly labeled as a draft on the first page and the signature lines at the end of the report should either be deleted or marked through.

4.2.4 Signing the Report

The drafter of the report is responsible for arranging for members of the conference committee to sign the report. Every member of the conference committee should be offered an opportunity to sign the report, including members who were absent from the meeting at which the report was adopted and members who voted against the report.

4.2.5 Filing the Report - Adoption

After the report is signed, four copies of the signed report must be made for filing with the House and Senate. The signed original and two copies are filed with the house assenting to the conference. (Senate bills are filed with the House, and House bills are filed with the Senate.) The other two copies are filed with the opposite house.

Usually, a bill's house of origin requests the conference, and the second house assents.

Therefore, the second house usually acts first on the conference committee report.

4.2.6 Guidelines for Matters of Form

(1) No "white out" changes should be made on an original conference committee report. (This is subject to change in a "rush" situation, in which case the person making the changes on the original is responsible for making sure that the changes are also made in the document as stored in the computer.)

(2) No line numbers should appear on the side of the page. (A conference committee report is not subject to amendment.)

(3) Signature lines should never appear on a page by themselves.

(4) Conference committee reports on a House bill should have House signature lines appearing on the left side of the page and Senate signature lines appearing on the right side of the page. This format is reversed for a Senate bill.

4.3 PROCEDURAL ASPECTS OF CONFERENCE COMMITTEES

The joint rules and the rules of the House and the Senate set forth a number of requirements and procedural limitations on conference committees, including limiting the options for action depending on the particular stage the bill is in. See Appendix D of this manual for charts listing the conference committee options for House bills and Senate bills, depending upon what stage of proceedings the particular bill is in.

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SPECIAL RULES AND TECHNIQUES OF DRAFTING AND GRAMMAR AND STYLE

5.1 JOINT RULE 21

Under Joint Rule No. 21 of the Senate and House of Representatives, all bills must be submitted to the Office of Legislative Legal Services before introduction for approval as to form.

In every bill amending existing law, Joint Rule No. 21 must be applied to show what specific changes in existing law are made in the bill by using capitalization and cancelled letter type. At the discretion of the Office, when amendments are so extensive or compliance with the method of showing changes is not feasible, the repeal or repeal and reenacting methods may be used rather than the capitalization and cancelled letter method. The requirement to show changes in existing law by using capitalization and cancelled letter type is also specified in section 24-70-204 (2), C.R.S. 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 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 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 capital letters.

Several examples of capitalization requirements under Joint Rule No. 21 follow.

5.1.1.1 Amending Existing Law and Showing Changes by Use of Capitalization and Cancelled Letter Type

SECTION 1. In Colorado Revised Statutes, **amend** 10-16-129 as follows:

10-16-129. Costs of administration. 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 under 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 corporation ~~on December 31 of~~ IN the prior CALENDAR year.

5.1.1.2 Amending Existing Law by Adding a New Article, Part, Section, Subsection, Etc. - Capitalization of New Material Is Required

SECTION 2. In Colorado Revised Statutes, 26-2-111, **add** (7) as follows:

26-2-111. Eligibility for public assistance. (7) IN ACCORDANCE WITH DEPARTMENT RULES, MEDICAL CARE WITH THE SAME SCOPE OF BENEFITS AS THE MEDICAL CARE PROVIDED IN ARTICLE 4 OF THIS TITLE 26 UNDER THE "COLORADO MEDICAL ASSISTANCE ACT" SHALL BE PROVIDED TO THOSE PERSONS ELIGIBLE FOR AID TO THE NEEDY DISABLED DUE TO A TEMPORARY DISABILITY AS DEFINED IN SECTION 26-2-103 (6)(a) AND DEPARTMENT RULES.

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 Capital Letters

SECTION 3. 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, BUT NOT LIMITED TO, 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 become attached to or inserted in and distributed with such newspapers, OR DIRECT MAIL ADVERTISING MATERIALS WHICH 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 Capital Letters, Regardless of Length

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

25-4-1410. Repeal of part. THIS PART 14 IS REPEALED, EFFECTIVE JULY 1, 2000.

5.1.2 Bold & Italics for New Numerals in Statutory Text

The use of Bold and Italics (B&I) in bill language has been approved by COLS and is now mandatory for statutory language in only the following two categories:

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

The general rule is that new statutory language is shown in small capital font. However, this coding does not make a noticeable difference with symbols that cannot be capitalized, including numerals and dollar signs. Therefore, when adding new numerals in statutory text that occur either in a series of numerals or a table, whether an internal reference, a dollar amount, a year, or other numeral, the drafter shall surround the numeral with a "bold" code *and* an "italics" code to clearly indicate that the numeral is new. If parentheses or a dollar sign symbol are adjacent to the numeral, without a space, then the drafter should include that symbol within the bold and italics coding. Drafters should continue to show repealed numerals with "strike-type" coding.

B&I Coding: The B&I coding operates the same as small cap 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. In order 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)...

It should be noted that if these standards are not met exactly, it will not negatively impact enrolling or pubs from a technical standpoint. While these are the standards by which we should use B&I, it will not "break" the system if the B&I codes are swapped, or if you miss a comma here and there.

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

5.1.2.1 Category 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),*** (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 shall be:

(a) For the ~~2015-16~~ ***2017-2018,*** 2018-19, 2019-20, and ~~later~~ ***2020-21*** budget years, the amount must be...

5.1.2.2 Category 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 B&I Rule Does Not Apply: New Language Is Clear from Context

B&I only works if it is clear and convenient for the drafter and reader. Please use your best judgement on determining if 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 in the addition of an article or title number. Normal coding procedures apply.

5.1.2.3.1 Using Small Caps to Show Context: Part Number

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

5.1.2.3.2 Using Small Caps to Show Context: 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).

5.1.2.3.3 Final Number in the Series Is Accompanied by Small Caps

(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, AND 24-5-101.

5.1.3 Repealing Existing Law

The repeal of a portion of C.R.S. is indicated by cancelled letter type unless the material being repealed exceeds one page or one section, in which case the repeal is indicated by a straight repeal clause.

5.1.3.1 Repeal Without Other Amendments

SECTION 1. 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 2. 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~~ ARTICLE 9 shall affect facilities licensed under the provisions of the federal "Animal Welfare Act of 1970", 7 U.S.C. sec. 2131 et seq., as amended.

5.1.3.3 Repeal of Material Exceeding One Page or One Section in Length - Straight Repeal

SECTION 3. In Colorado Revised Statutes, **repeal** part 15 of article 4 of title 25.

5.1.4 Repealing and Reenacting Existing Law

Existing law should not be repealed and reenacted unless the existing material exceeds one page or one section in length.

When existing law is completely rewritten, it should be amended by showing the text of the existing law in cancelled letter type followed by the text of the new law in capital letters. However, if the existing law exceeds one page or one section in length, the existing law may be repealed and reenacted in which case the text of the existing law is not shown and the new material is shown in capital letters.

5.1.4.1 Existing Law Does Not Exceed One Page or One Section

SECTION 1. 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~~. ANY SUBSTANCE OR MIXTURE OF SUBSTANCES INTENDED FOR PREVENTING, DESTROYING, REPELLING, OR MITIGATING ANY PEST OR ANY SUBSTANCE OR MIXTURE OF SUBSTANCES INTENDED FOR USE AS A PLANT REGULATOR, DEFOLIANT, OR DESICCANT; EXCEPT THAT THE TERM "PESTICIDE" SHALL NOT INCLUDE ANY ARTICLE THAT IS A "NEW ANIMAL DRUG" AS DESIGNATED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION.

5.1.4.2 Existing Law Exceeds One Page or One Section

SECTION 2. 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 Whenever Helpful to a Clear Understanding of the Amendment - "User-friendly" Drafting

A primary consideration in preparing bills should be to present changes to the law in a manner that facilitates clear understanding. This concept is called "user-friendly" drafting. Therefore, the drafter should include as much of a statute as deemed necessary to put a proposed change in context. The practice of amending the smallest subdivision of a section and not showing related subdivisions or introductory portions should be discouraged since it is not as likely to show amendments in context. Use of entire sections or subsections is preferred except where the length of the section or subsection makes this impractical or inappropriate (such as where the length of the additional material exceeds one page).

Additionally, a short introductory portion of a statute should *always* be included in a bill even though it will not be amended when one or more of the provisions following that introductory portion are being amended.

5.1.5.1 Amended Material Shown in Context

SECTION 1. In Colorado Revised Statutes, **amend** 22-20-105.5 as follows:

22-20-105.5. Statewide information and communication network. (1) The department shall establish a statewide information and communication network in order to promote excellence in education for all students in public schools, including gifted children.

(2) This section is repealed, effective July 1, ~~1993~~ 1995, unless the general assembly acting by bill continues said section.

5.1.5.2 Introductory Portion Shown

SECTION 2. 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 Capitalization Always to Follow Cancelled Letter Type

In applying the rule, first show the cancelled letter type if new material is to be substituted for the omitted material and then follow with the capitalized new material.

Correct Application:

"The permit fee shall be ~~two~~ FOUR dollars."

Incorrect Application:

"The permit fee shall be FOUR ~~two~~ dollars."

5.1.6.2 Addition to Unsubdivided Section

In adding new material to a section that has no numbered subsections, designate the existing section as subsection (1) and then add the new material as a subsection (2) in 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. The entire section must be amended and all the new material must be in capital letters. Example:

SECTION 1. 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 shall be exercised by a board of county commissioners therefor.

(2) ANY REAL OR PERSONAL ESTATE CONVEYED TO ANY COUNTY SHALL BE DEEMED THE PROPERTY OF SUCH COUNTY.

[The existing law before amendment contained only the first part of the section headnote and no subsection number (1).]

5.1.6.3 Changes or Additions to Section Headnotes

The example shown in section 5.1.6.2 above 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 should be reflected in the section headnote by adding the words "**property of county.**" However, in changing or expanding a section headnote, Joint Rule No. 21 need not be applied since 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 as possible and as descriptive of the changes covered by the amendment as possible.

A section headnote may not be changed by amendment unless substantive amendments to the text of the section are also being made. If necessary, section headnotes may be changed editorially by the Revisor of Statutes.

5.1.6.4 Punctuation Changes

Joint Rule No. 21 need not be applied to changes in punctuation since one obviously cannot capitalize a period, comma, or semicolon or put any one of them in cancelled letter type.

Correct Application:

The applicant shall pay a fee of two dollars. ~~and~~ Any such copy of the record is prima facie evidence ....

Merely insert the period in place of the existing comma. When punctuation is contained in a series of words in cancelled letter type, the strike type will run through the punctuation as in this example: "The commission shall ~~receive, investigate, and pass upon~~ HEAR complaints."

Incorrect Application:

The applicant shall pay a fee of two dollars~~,~~. ~~and any~~ ANY such copy of the record is prima facie evidence ....

5.1.6.5 Capitalization changes

To change the capitalization of a word, either by uppercasing the first letter or lowercasing

the first letter, it is not necessary to strike the original word and substitute the new word in small capitals. Capitalization is considered an editorial change and can simply be changed.

Correct application: 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 cancel through or capitalize part of a word. Cancel through the entire word and capitalize 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 constitution of the state of Colorado will be concurrent resolutions rather than bills (either Senate or House concurrent resolutions depending upon where introduced), and, under the following rules of the House and Senate, Joint Rule No. 21 is applied to show changes to be made by amendment:

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 Office of Legislative Legal Services

Joint Rule No. 21 provides in part as follows:

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.

Bills drafted by this Office are drafted in compliance with Joint Rule No. 21; however, 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, PARAGRAPHS - DEFINITIONS SECTIONS

Subsections, except for definitions, almost always consist of complete sentences. If a section is to consist of an introductory clause ending with a colon followed by a series of numbered or lettered subdivisions, use a numbered subsection with paragraphs as follows:

Correct Application:

> **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;
> (b) Secure borrowed funds;
> (c) Secure deposits when the depositor is required to obtain such security by the laws of the United States, by the terms of any interstate compact, by the laws of any state, or by the order of a court of competent jurisdiction;
> (d) Otherwise comply with the provisions of this code.

Incorrect Application:

> **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;
> (2) Secure borrowed funds;
> (3) Secure deposits when the depositor is required to obtain such security by the laws of the United States, by the terms of any interstate compact, by the laws of any state, or by the order of a court of competent jurisdiction;
> (4) Otherwise comply with the provisions of this code.

Partial sentences contained in subdivisions following a colon end with a semicolon; complete sentences in these subdivisions are punctuated with a period (see section 11-7-106 (1)(d), C.R.S.).

Definitions sections are slightly different since the introductory portion is not designated as a subsection. Each definition is given a separate subsection number; each subsection ends with a period - not a semicolon; and 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 25-7-103, 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 the cancelled type, the new language inserted in its place, 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 section B.7 of Appendix B of this manual for examples.

No substantive law should be included in a definitions sections. Definitions should be just that - definitions.

Part 4 of article 4 of title 2, C.R.S., contains definitions that apply to every statute. For example, it is not necessary to define "person" in a new act as 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 new act.

5.3 AMENDMENTS OR ADDITIONS TO THE SAME SECTION OR ARTICLE IN TWO OR MORE BILLS

Sometimes a bill already drafted or introduced amends the same section or adds new material, identically numbered, as the bill being prepared. If the bills are intended to accomplish the same result, the drafter may notify the sponsor of the later bill once all issues of confidentiality have been resolved. The sponsor who requested the later bill may prefer to introduce an amendment to the bill already drafted or introduced. (Beware of title and single-subject questions in this regard.)

Each bill must be drafted according to the statutes as they exist and not in relation to any bill that has not yet been enacted even though introduced. Bills amending the same section or adding to the same statute, with identical numbers, are usually considered by a committee of reference to which all bills on the same subject are referred, and necessary amendments are made to readjust the sections amended. Further, the Revisor of Statutes notifies sponsors and committee chairmen of these conflicting bills so that appropriate amendments may be made. 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.

Sometimes it is necessary to amend a section that has been amended or enacted in a bill adopted earlier in a particular session. The following are examples of the amending clauses for such an amendment:

> **SECTION 1.** In Colorado Revised Statutes, 16-7-403, **amend as amended by House Bill 97-1254** (1) as follows:
>
> **SECTION 2.** In Colorado Revised Statutes, **amend as amended by House Bill 97-1320** 17-22.5-304 as follows:
>
> **SECTION 3.** In Colorado Revised Statutes, 37-90-137 **amend as enacted by Senate Bill 97-5** (8) as follows:

Other times, it is necessary to refer in the statute to a bill that has passed during that same session. To do that, the drafter needs to state the number of the bill and the phrase, "enacted in *year*" and fill in the year. For example:

> …THE PRIORITIZED LIST OF PROJECTS TO BE FUNDED BY THE REVENUES APPROPRIATED FOR SUCH YEAR BY HOUSE BILL 09-1234, ENACTED IN 2009,

SHALL CONSIST ONLY OF…

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 contains 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.

Drafters should become familiar with "Sutherland Statutory Construction". It 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. A set of Sutherland's is kept in the copy room by the Business Team.

5.5 INADVERTENT OMISSIONS FROM EXISTING LAW

Even though language to be deleted must be put in cancelled letter type, many times in drafting or typing a bill a word or words, a sentence, or even entire subsections or paragraphs that the drafter does not want omitted are omitted by inadvertence. This presents a serious problem since, if challenged, any wording omitted from an existing statute that is being amended may be construed by a court to have been repealed. The omission is usually caught in proofreading the final bill for introduction, but it is still extremely important that the drafter check each draft against existing law before it is finally typed as to the inclusion or other disposition of all provisions of the law that is being amended. This is particularly important in checking over a bill prepared by outside sources. A 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 computer database and the legislative editor should proof the bill draft against the actual statute.

Inadvertent omissions of language can also occur 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 1.** In Colorado Revised Statutes, **amend** 33-6-129 as follows:
>
> **33-6-129. Duty of district attorneys.** (1) It is the duty of the district attorney of the judicial district wherein any ~~violation~~ VIOLATOR of the provisions of this title 33 ~~occurs~~ RESIDES to prosecute such violation.

Section 33-6-129, C.R.S., in existing law has two subsections numbered (1) and (2). In the draft, only subsection (1) is amended and subsection (2) is omitted entirely, whereas the amending clause states that the entire section is to be amended. If this amendment was

enacted as drafted, subsection (2) of the existing law could be lost entirely. The amending clause should have stated that 33-6-129 (1) was to be amended.

A drafter should not rely on those proofing a bill to find and correct these types of errors; instead, each drafter should be certain to identify specifically what statutory subdivision is being amended and to check the copy carefully to see 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, and other nonstatutory provisions (except appropriation clauses), Colorado Revised Statutes should be cited as "Colorado Revised Statutes". In appropriation clauses, the abbreviation "C.R.S." is used when referring to the Colorado Revised Statutes. (See section 24-75-112.5, C.R.S.)

Prior to 2017, when referring to 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 should not use "C.R.S." whether the reference is within the same title or not. References to other sections are made to "section 5-6-301". However, in an amending clause, the word "section" should be omitted. When referencing a title, article, or part of a statute, reference the statute as it exists at the time of the amendment as well as to sections added or amendments made at a later date.

When citing a Colorado statute by using its short title, 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.

5.6.2 References to C.R.S. Section Subdivisions

Prior to 2017, when referencing a subsection, paragraph, subparagraph, or sub-subparagraph within the same C.R.S. section, the references were 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, references are written 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 making references within 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)".

The changes to internal references specified in sections 5.6.1. and 5.6.2. implemented in 2017 are prospective: Existing internal references that are written in the old format are to be updated at a drafter's discretion only through bills and not on revision.

5.6.3 References to Federal Law

Consistent with references to short titles of Colorado acts, references to short titles of federal acts are placed in quotation marks and capitalized 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 in the final index volume of U.S. Code Annotated is extremely useful in finding the exact short title to a federal act. 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"". The word "section" is not capitalized. References to federal law found in the United States 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" should be included and is preferable to the phrases "and amendments thereto" or "as from time to time amended". The drafter should use as many references to a short title, U.S.C.A., and statutes at large as are available and known to be accurate.

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 report shall be submitted 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." If the committee of reference is a statutorily created committee like joint budget committee or legislative audit committee use the statutorily-given name and do not include the successor committee phrase.

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. Numerous legislative manuals of other states and a textbook titled "Legislative Drafting" by Reed Dickerson discuss rules of grammatical construction and word usage in great detail. These manuals and textbook are available in the Office of Legislative Legal Services 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 are used in statutory drafting. In addition, bills and amendments are required by statute 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 have been consolidated in this Chapter.

Under section 2-2-801, C.R.S., the staff of the Office of Legislative Legal Services and others are required 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. (Emphasis added.)

5.7.1 Guidelines for the Use of Plain Language and Principles of Grammar and Style

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:

1. The meaning of statutes should be clear and easily understood.

All of the concepts presented here are directed towards making the statutes clear in meaning and understandable to the public.

2. Use proper grammar and follow the drafting manual requirements - use standard English.

3. 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".

4. 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 do not become so intent on brevity that all necessary requirements are not adequately treated. 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 such absentee voting would be handled. The drafter should have outlined a detailed procedure providing for the method of 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. Use the structure of the statutes to assist you.

A sentence that is lengthy or difficult to follow may be made clear through the proper use of subdivisions in the statutes.

After the 2011 legislative session, the Office revised its drafting guidelines pertaining to verb tense, active voice, and the use of authority verbs. See paragraphs 6, 7, and 8. These guidelines emphasize writing in active voice, writing in present tense, and more consistent use of the authority verbs "shall", "shall not", "may", and "need not". Where possible, standard "boilerplate" clauses in the Legislative Drafting Manual and drafting macros used by the Office have been revised to conform with the new guidelines. In applying the guidelines in paragraphs 6, 7, and 8 to *existing* statutes, the drafter needs to use caution and discretion. The drafter will find many examples of existing statutes that do not follow these guidelines. The context of the statute or how much of the statute is being amended in the bill may indicate that strict conformity with these guidelines is inappropriate. The drafter should retain passive voice in a statute where the actor's identity is unknown or there are numerous actors and it would be difficult to determine the proper actor applying the test provided in paragraph 6. In addition, some bill sponsors do not like to make "clean-up" changes to existing statutes in their bills. See the "Guidelines for When to Update Statutes Regarding The Present Tense, Active Voice, and Authority Verbs" and "Guidelines for the Use of 'Shall' and 'Must'" in Appendix F.

6. Use the active voice in your 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.

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: I was hit by the dodgeball.
Active voice: The dodgeball hit me.

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.

7. 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 statutory 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 any violation of this section *shall be* one hundred dollars.
Present tense: Beginning January 1, 2025, the penalty for any 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.

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 (see "Guidelines for the Use of 'Shall' and 'Must'" in Appendix F of this manual).

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 your intended meaning, then use the word or words from the left-hand column.

shall	=	a person "has a duty to" (but see paragraph (a)(i)(C) 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".

(a) **Shall.** Use "shall" to impose a duty on a person. "Will", "must", and "should" should not

be used as a substitute for "shall".

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 clerk *may* notify an elector whose name has been purged from the registration records of that fact.
Write: The clerk *shall* notify an elector whose name has been purged from the registration records of that fact. (See *Duprey v. Anderson*, 518 P.2d 807 (Colo. 1974) (due process requires notice, so the court held "may" means "shall")).

Avoid: A candidate shall reside in the district.
Write: Only a person who resides in the district is qualified to be a candidate.

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.

(I) 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" implies 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.

(C) *In the passive voice.* (See section 5.7.1.6 above for the rule concerning use of the active voice.) If you use 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", even though the subject of the sentence is a thing. For example:

The votes *must* be recorded within twenty-four hours after being cast. (This 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.

(D) *To indicate a future occurrence.* (See section 5.7.1.7 above for the rule concerning use of the present tense.)

(II) 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.

(b) (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.** With the new definition of "shall", the drafter 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. That's not what the apparent intent is; indeed, it's the reverse - the drafter apparently wants to prohibit the action. 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, someone does have a duty (the director) 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 you can: "The director shall not require a person to ....".

(c) **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.

(d) **Must.** Use "must" or "must not" to impose a condition on a thing or person. 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.") Drafters should consider whether to explicitly state the consequence of not meeting the condition.

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: The board *shall not* include more than one member from any congressional district.
Write: For its actions to be valid, the board *must not* include more than one member from any congressional district.

Avoid: An eligible grantee *shall not* have an income above the federal poverty line.
Write: An eligible grantee *must not* have an income above the federal poverty line.

(e) **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.

9. Use the singular instead of the plural wherever possible. Part 1 of article 4 of title 2, C.R.S., provides in part as follows:

> **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	rights-of-way
corporation counsels	judge advocates	trade unions
deputy sheriffs	notaries public	

10. Use base verbs.

Nominalization: The commission shall *make a determination* whether the application is approved within fifteen days of filing.

Base verb: The commission shall *determine* whether the application is approved within fifteen days of filing.

11. Use common words, avoiding technical terms or "legalese". However, terms of art should be used if they are appropriate.

12. Use the common meanings of words.

Strained meanings for words, even if precisely defined in the statutes, may lead to confusion or misinterpretation.

13. Avoid redundant phrases.

Examples: Null and void; full and complete; true and correct.

For "null and void" use "void"; for "shall be in force and effect" use "shall take effect"; and for "authorized and empowered" use "may".

14. 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 his duty to sign and approve every order which may be issued by the commission, and said 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 provide for the publication of such order as required by section X-X-XXX.

15. 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.

16. 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 word or phrase should be used exactly as defined and only when the meaning given by the definition is intended. If a contrary meaning is intended, the drafter must state the contrary meaning specifically.

17. 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 definition or by a clause similar to the following: "The department of natural resources, referred to in this article 6 as the "department", shall...."

18. 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.

19. 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. In the past this office has used provisos to make exceptions. The present practice in bill drafting is to avoid using provisos altogether. 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, a simple exception to a preceding provision can be made by the use of such words 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.

Example: An application for a concealed weapon shall be approved *provided that* the applicant has not been convicted of more than five homicides.

Suggestion: An application for a concealed weapon shall be approved *if (so long as)* the applicant has not been convicted of more than five homicides.

20. If possible, express provisions positively rather than negatively.

Examples:

Negative: 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 16-2-202.

Positive: 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 16-2-202.

21. 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 as provided by 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.

22. Don't use "herein", "heretofore", or other similar words.

These are imprecise references to the statutes, dates, or other matters. Refer instead to the particular statutory material, e.g., "the air pollution control commission, referred to in this article __ [not, "herein"] as the "commission", shall...", or to the date, e.g., "all persons licensed before July 1, 1988", [not, "heretofore"]. When the reference is to the date an act takes effect and that date will be the date of the act's passage rather than a date specified in the act, in the case of new material, refer to "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,...."

23. Use the words "and" and "or" as follows:

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: The penalty for a conviction of any provision of this section is six months imprisonment, a five hundred dollar fine, *or both*.

Whether to use an "and" or an "or" at the end of the second-to-last paragraph in a series of paragraphs under a subsection (or another level of subdivision) often depends upon what is stated in the introductory portion to the subsection. If the introductory portion states "all of the following" or the "the following matters", it is clear that all the items listed in the series of paragraphs must be followed. In that instance, the "and" should be used in drafting a new series or if it is missing in an existing statute it is implied. If the introductory portion states "any one of the following", the "or" should be used in drafting a new series. If the introductory portion in an existing statute states "any one of the following", and the "or" is

missing in the series, the "or" is implied.

When drafting a *new* series, the drafter should use the "and" or "or" in the series as described above depending upon the language in the introductory portion. Many times in bill drafting, the drafter will need to amend a statute with an existing series to add another item to the series. Depending on the language in the introductory portion, the drafter may need to amend the existing statute in the bill to add the missing "and" or "or" in the appropriate location. If the drafter is adding the new paragraph or item to the end of the series and the existing statute already has an "and" or "or", the standard drafting practice is to 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. The general rule to remember is that it is always best to address the "and" or "or" in the series when drafting the bill.

Because the amending process can be rushed and an existing "and" or "or" in the wrong location in the series may get overlooked, the Office Publications Team has developed a category of revision change to fix this problem through revision. On revision, the Office 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 Office Publications Team will not add an "and" or "or" to a statute on revision where one never existed in the statute.

24. Do not use multiple expressions of the same statutory requirement 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.

25. Express numbers as follows:

In substantive law, express numbers in words. For example: "A surety bond in the sum of five thousand dollars shall be filed." Also, do not use the abbreviated or slang references to numbers. For example, write "one thousand six hundred pounds" but not "sixteen hundred pounds".

In appropriations bills or appropriation sections, express numbers in both words and figures: "There is hereby appropriated, out of the wildlife cash fund, the sum of five thousand dollars and fifty cents ($5,000.50)" [or "five thousand dollars ($5,000)", if there are no cents].

26. Express dates as follows:

July 1, 2000; or beginning July 1, 2000, and ending June 30, 2001. The license shall be renewed prior to July 1 of
each year.

27. Express time intervals for court filings or agency filings in multiples of seven.

Starting in 2012, to avoid questions when pleadings were due to be filed by a Saturday or

Sunday, the Colorado Supreme Court amended its rules so that all time intervals were 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.

A bill establishing a time by which something must be filed with a court or with an agency should be written in multiples of seven. For example: "If either party in a civil action believes that the judgment of the county court is in error, he or she 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 said fourteen days an appeal bond with the clerk of the county court."

28. Express time as follows:

12 noon or 12 midnight; 9 a.m. or 2 p.m. Only with the figure "1" would you use a colon and 00, e.g., "1:00 p.m." - *not* "1 p.m."

29. Express age as follows:

Use "years of age", not "years old".
Example: "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 is a lower age limit, but no upper limit:
Example: "Persons who are *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:
Example: "A person who is *under twenty-five years of age*" (people who are twenty-five years of age are not included) rather than "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: "Persons who are *eighteen years of age or older and under twenty-one years of age*" (the range includes people who are eighteen but not people who are twenty-one and over).

30. Use of the word "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. Age should be expressed as indicated in section 5.7.1.28 above.

31. Verify that a prepositional word or phrase encompasses all of the numbers, dates, or items intended to be included by its use.

For example, "persons licensed prior to July 1, 2000, and after said date" does not provide for persons licensed *on* July 1, 2000. Use of the prepositions "on" and "after" would have accomplished the inclusion of persons licensed on July 1, 2000. This caution is especially applicable to numerical tables or categories.

32. Don't use the terms "handicap", "physically handicapped", "the handicapped" or other similar words.

In 1993, the General Assembly passed SB 93-242 for the purpose of changing 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". Drafters 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".

33. Use "people first" language when describing people with disabilities.

In 2010, the General Assembly passed HB 10-1137, which requires the use of "people first" language in the Colorado Revised Statutes. Examples of people first language include, but are not limited to: Persons with disabilities, persons with developmental disabilities, persons with mental illness, and persons with autism. Drafters should use terms consistent with HB 10-1137 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." The expectation is that people first language would also apply to terms beyond people or persons. Instead of referring to "seriously mentally ill offenders" the term should be "offenders who are seriously mentally ill". Depending on the context, it could also apply to terms like defendant, petitioner, applicant, or taxpayer.

34. Do not use "any", "each", "all", or "some" if you can use "a", "an", or "the" with the same result.

35. 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".

36. Use "that" and "which" correctly.

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.

37. Avoid gender-specific terms.

(See section 5.8 on gender-neutral language later in this Chapter.)

Attempt to use terms that are not gender specific. While it is not encouraged, the phrases "his or her" or "he or she" may sometimes be used to avoid lengthy repetition of a noun.

38. Watch for problems related to particular words that are frequently confused or misused.

See the Glossary of Words and Phrases Frequently Misused contained in section 5.11 of this Chapter.

39. 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, any 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 hereby 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 of 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 each of the following that are green:
(1) Eggs; and
(2) Ham."

- **Or repeat the qualifier.**

If the second suggestion above 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 of an interest in property." In other words, it's every way you can stop owning something. And, you can stop owning something by selling it:

Avoid: "You shall not sell or transfer to a family member green eggs."
Write: "You shall not transfer to a family member green eggs."

- **If necessary, repeat the preposition.**

It's best to avoid a qualifier after a list, but this can be nearly impossible. 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 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 directive provides 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 directive states that the use or the failure to use gender-neutral language shall not prevent any member from offering any measure or amendment. If the drafter has any question about specific language or about the use 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 when drafting non-statutory measures and new bodies of law. However, when the

length of the new material is relatively short, more caution must be exercised. Generally, gender-neutral language can be used in a new or repealed and reenacted article of C.R.S., but its use in a new section or subsection may create conflicts with existing provisions not being amended. Therefore, if the drafter adds a new provision to existing law, the drafter should check the portions not being amended to assure that any 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 a new section is added to that article which uses the gender-neutral alternative of "police officer", an ambiguity could result.

The same degree of care should be exercised when amending an existing statute. For example, if a specific subsection of an existing statute is amended by adding feminine pronouns to existing masculine pronouns to make that subsection gender-neutral, the drafter should check to ensure that the use of the masculine pronoun in subsections that are unamended will not result in an erroneous interpretation of the provision. The underlying question the drafter should consider is whether the changes to gender-neutral language would create an ambiguity or conflict in the remaining portions of the statute that are not being amended.

5.8.2 Avoid the Use of Gender-specific Nouns

Use of nouns that are gender-specific should be avoided in favor of the use of substitutes that are generally accepted by recognized authorities on correct English usage. For example, "presiding officer" may be substituted for "chairman", but the use of "chairperson" is discouraged as a substitute because it is not as well accepted.

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
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
grandfather, grandmother	grandparents
husband and wife	married couple, spouses
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
per man	per person
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	worker

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. A number of different alternatives are suggested, 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 word that would have been the pronoun's antecedent reference. In some instances the possessive noun may be repeated.

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 applicant shall sign ~~his~~ THE APPLICANT'S name.
>
> The executive director shall issue a report and ~~his~~ THE EXECUTIVE DIRECTOR'S recommendation.

2. Substitute a noun for the pronoun.

Examples:

> If ~~he~~ THE INDIVIDUAL submits an application, it shall be considered.
>
> Each person listed shall be eligible. ~~He~~ SUCH PERSON shall also be 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 shall hold ~~his~~ office until a successor is appointed.
>
> Each employee shall retain such status as held ~~by him~~ on the date of ~~his~~ 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:

Use a relative clause:

~~If~~ An applicant WHO has been licensed in another state ~~he~~ shall submit a verified application.

Use a modifier without an expressed subject:

~~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.

Remove the nominal:

A person who imports or ~~has in his possession~~ POSSESSES dangerous drugs commits a class 1 felony.

Use a plural:

~~A member~~ MEMBERS shall submit ~~his~~ THEIR expense ~~voucher~~ VOUCHERS.

6. Use both the masculine and feminine pronoun.

Examples:

The duties shall be exercised in the name of the director and under his OR HER direction.

A person shall receive an exemption if he OR SHE submits an application.

Use of both a masculine and feminine pronoun in several clauses in a row can become verbose and repetitive. In such cases, a different alternative should be tried (see the first example under alternative (1) of this list).

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:

> If the member's wife is living, she shall be made a defendant.

Another example not contained in the guidelines that also illustrates this principle is contained in section 26-15-104.5, C.R.S., concerning prohibition on the use of public funds for abortions.

> **26-15-104.5. No public funds for abortion - exception.** (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

1. 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 (*In re Senate Concurrent Resolution No. 10*, 137 Colo. 491, 328 P.2d 103 (1958)).

2. Always use a comma in a series before a conjunction (or a semicolon if clauses of a series have punctuation within them). For example:

> No city, town, county, or city and county shall require any license in addition to the license required by this article 10.

3. 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:

> This act shall be known and may be cited as the "Air Pollution Control Act". (The period is not a part of the quote.)

4. Punctuation in bills based on a uniform act. See section 12.5.2 in Chapter 12 of this manual, titled "Guidelines for Drafting Uniform Acts".

5.10 CAPITALIZATION

Due to historical practices, the Office follows capitalization policies for the Colorado Revised Statutes that are somewhat different than 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", 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 or the first word following a colon;

- The first word of each entry of an enumerated paragraph after a colon;

- 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";

- The proper name of a private entity or publication; or

Examples: "Colorado Bar Association", or "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. However, changes to capitalization in the Colorado Revised Statutes are to be made prospectively, not retrospectively.

There are a couple of exceptions to the capitalization practices described in this section: When a bill is based on a uniform act, the capitalization generally should not be changed. In memorials and resolutions, which are frequently sent to Congress or government officials, the Office uses standard rules of capitalization.

5.11 GLOSSARY OF WORDS AND PHRASES FREQUENTLY MISUSED

a, an Use *a* before words beginning with a consonant sound: *a book, a unique necklace*. Use *an* before words beginning with a vowel sound: an apple, an urchin. NOTE: It is the sound, not the actual letter, that determines the form of the indefinite article: *a university, an R.C.A. television set, an 8-sided object*.

accept, except *Accept* means to receive: "Please *accept* my offer." The verb *except* means to leave out: "Will you *except* the last provision of the contract?"

adapt, adopt *Adapt* incorporates the word *apt*, which means *suited to the purpose*; therefore, *adapt* means *to make suitable*. *Adopt* means *to choose or to make one's own selection*. "We *adopted* the style of play which had been *adapted* from the style used by the Green Bay Packers."

adverse, averse *Adverse* means opposing: *adverse circumstances*. *Averse* means *disinclined*: "He was *averse* to my proposal." *Adverse* is usually related to actions or things, *averse* to people (who have an aversion).

advert, avert *Advert* means *refer*: "The speaker *adverted* to an earlier talk he had given." *Avert* means *ward off*: "He narrowly *averted* a bad fall."

affect, effect *Affect* means *to influence*: "His attitude in class *affected* his grade." *Affect* is never used as a noun except in psychological terminology. *Effect* as a noun means *result*: "The *effect* of the explosion was disastrous." *Effect* as a verb means *to accomplish*: "The new machinery *effected* a decided improvement in the product."

aggravate Do not use *aggravate* to mean *irritate*. *Aggravate* means to make a bad situation worse.

aid, aide *Aid*, meaning *to assist*, can be a verb: "Alice will *aid* the toddlers in tying their shoes." *Aid* can also be a noun: "Robert gave *aid* to the homeless." *Aide* is always a noun meaning an assistant: "The general had an excellent *aide* to assist him."

all ready, already *All ready*, an adjective,

means everyone is in readiness or properly prepared: "We were *all ready* to go." Already, an adverb, means previously: "They had *already* gone."

allusion, illusion, delusion An *allusion* is an indirect reference to a literary work or to a statement by another: "When she said, 'To go or not to go, that is the question,' Betty was using an *allusion* to *Hamlet*." An *illusion* is something that appears real to the perception, but is not: "Richard realized that although the magician seemed to be sawing a woman in half, it was an *illusion*." A *delusion* is also a false perception about one's self or others, but is based more on a set of false beliefs than an unreal image: "Although he had achieved very little in school, Joseph had *delusions* of grandeur."

***alright** A bad spelling of *all right*. Do not confuse the spelling with words like *almost*, *already*, *altogether*.

alternate, alternative *Alternate* as a verb means to function every other time or to act by turns: "Travis and Jason will *alternate* playing the Nintendo game." *Alternate* as a noun means one who takes the place of another: "On the debating team, Lindsey served as an *alternate*." *Alternative*, also a noun, refers to a choice between two possibilities, one of which must be rejected: "Her only *alternative* was to leave immediately or remain longer than she wished."

alumnus, alumna, alumni, alumnae An *alumnus* is a male graduate. *Alumni* is the plural. An *alumna* is a female graduate. *Alumnae* is the plural. *Alumni* is used for male and female combined.

ambivalent, ambiguous *Ambivalent* means mixed or conflicting feelings about a person or an idea. *Ambiguous* is a statement capable of being misinterpreted because it is not clear.

amend, emend *Amend* means to alter for the better, as in *amendments* to the Constitution. Emend, once an alternative spelling for *amend*, now is specialized in use to mean removing errors from a text.

amiable, amicable *Amiable* is used to describe persons who are kind, gentle, and friendly. *Amicable* is used to describe arrangements or settlements which are agreed to peacefully by both parties.

among, between *Between* is used in connection with two persons or things. "He divided the money *between* his two sons." Among is used for more than two: "He divided the money *among* his three sons." EXCEPTIONS: If more than two are involved in a united situation, *between* is used: "*Between* the four of us we raised a thousand dollars." If a comparison or an opposition is involved, *between* is used: "There was great rivalry *between* the three colleges. It was difficult to choose *between* them."

amount, number *Amount* refers to bulk or quantity: *amount* of sugar, grain, flour, money. Number refers to objects which are thought of as individual units: *number* of oranges, children, diamonds. Notice that most words following *amount* are singular (coal, butter, water) and that most words following number are plural (apples, bottles, cups).

and/or Although the legalism *and/or* is becoming common in current English, it is to be avoided as faddish verbiage. The simple word *or* carries exactly the same meaning in most cases and does not call attention to itself.

ante-, anti- These prefixes, though similar, are quite different in meaning. *Ante-* means *before*, as in *antechamber* (a small room that comes before a larger one) or *antebellum* (before the war). *Anti-* means opposed to, as in *antinuclear* or *antitoxin*.

appraise, apprise *Appraise* means to evaluate; *apprise* means to inform: "The jeweler *appraised* the diamond and *apprised* the owner of his evaluation."

apprehend, comprehend *Comprehend* means only to understand a communication; *apprehend* carries that meaning as well as anticipating with dread or anxiety, with the adjective form used more often: "Sarah was *apprehensive* about flying." *Comprehensive*

means all-inclusive, or covering completely: "The insurance policy was *comprehensive*."

apt, liable, likely *Apt* refers to a habitual disposition: "Having a good brain, he is *apt* to get high grades." *Likely* merely expresses probability: "It is *likely* to rain." *Liable* implies the probability of something unfortunate: "The firm is li*able* to fail."

as, like When used as a preposition, *like* should never introduce a clause (NOT *like I was saying*). When introducing a clause, as is used (*as I was saying*) even if some of the words of the clause are implied: "He did it as well *as* I [did]."

ascent, assent *Ascent* is a noun referring to a climb or movement upward; *assent* is a noun or verb having to do with agreement with an idea or an opinion: "Eugenia *assented* (or gave *assent*) to the group's opinion that the weather was too uncertain for an *ascent* up the mountain."

beside, besides *Beside* means *by the side of*: "Ask him to sit *beside* me." *Besides* means *in addition*: "She had an apartment in the city. *Besides*, she owned a home at the shore."

bimonthly, semimonthly *Bimonthly* means occurring every two months; *semimonthly* means twice a month. This can be applied to *biweekly*, *semiweekly* and *biennial*, *semiannual*.

bring, take *Bring* refers to action toward the writer or speaker: "*Bring* the book to me." *Take* refers to action away from the writer or speaker: "When you leave us, *take* your books with you."

burst, bust *Burst*, meaning to explode or erupt from inward pressure, is sometimes written *bust*, but this is slang and is incorrect.

can, may *Can* implies ability: "I *can* (I am able to) swim." *May* denotes permission: "*May* I (Have I permission to) swim in your pool?" In informal speech, when the context is clear, *can* and *may* are both used to express permission.

capital, capitol *Capital* denotes the seat of government of a state or nation. *Capitol* is the building in which a legislative assembly meets.

censure, criticize To *censure* always expresses disapproval, but to *criticize* may be neutral, expressing approval of some characteristics and disapproval of others. *Criticism* should be a careful weighing of the merits and demerits of such things as artistic works.

cite, site To *cite* is to make a reference to an original source when you are writing a research essay. The noun *site* applies to the space of ground occupied or to be occupied by a building: "The *site* of a new bank."

claim, assert *Claim* refers to a justified demand or legal right: "I *claim* this piece of property." "I *claim* the prize." It should not be used when only an assertion is involved; "He *asserted* (not *claimed*) that his demands were reasonable."

compare to, compare with *Compare to* is used to indicate a definite resemblance: "He compared the railroad *to* a street." *Compare with* is used to indicate an examination of similarities and dissimilarities: "He *compared* the Middle Ages *with* modern times."

complement, compliment A *complement* is something that fills up or completes, as in the sentence: "Foreign travel is a *complement* to the study of geography." A *compliment* is, of course, an expression of praise, as in "He paid her a high *compliment*."

compose, comprise The traditional rule states that the whole comprises the parts; the parts compose the whole. *Compose* means to make up the constituent parts of; constitute or form: "Fifty states compose the Union." *Comprise* means to consist of; be composed of: "The Union comprises fifty states."

comprehensible, comprehensive *Comprehensible* means capable of being understood. *Comprehensive* means all-inclusive or covering a wide range of knowledge on a subject.

compulsion, compunction *Compulsion* is to be

compelled to action by a psychological urge. *Compunction* is to feel anxiety because of guilt or remorse.

confidant, confident A *confidant* (*confidante*, if female) is a noun meaning a trusted friend. *Confident* is an adjective meaning you are certain, e.g., you are *confident* he or she will not betray your trust.

congenital, congenial A *congenital* defect is a bodily defect dating from birth. A *congenial* person is pleasant and sociable.

connotation, denotation The *connotation* of a word is what it suggests, favorably or unfavorably, beyond its dictionary meaning (*denotation*). For example, *steed denotes horse*, but *connotes* a powerful, beautiful horse ridden by a knight, unlike *nag*, which suggests a broken-down horse.

consensus Even in respected newspapers, *consensus* is sometimes misspelled "concensus," perhaps in the mistaken idea that a "census" has been taken to determine agreement. The root word has to do with consent, hence *consensus*. Do not use the phrase *consensus of opinion*, which is redundant.

consul, council, counsel *Consul* means a foreign embassy official: "The Swedish consul threw a party for the president." *Council* means an official body: "The city council passed the ordinance by a three-to-one margin." *Council* is a *group* of individuals who act in advisory capacity or who meet for the purposes of discussion or decision making: "The mayor met with the *council*." *Counsel* means to advise, or as a noun, means a legal advisor: "Find someone to *counsel* you about your accident. In fact, you should hire the company lawyer to act as *counsel* in this matter." "He sought my *counsel*." "He retained *counsel* to represent him at the trial." As a verb, *counsel* means to advise: "I would *counsel* you to accept the first good offer."

contemptible, contemptuous *Contemptible* is something that deserves contempt. A *contemptuous* person shows disdain for a person or thing.

continual, continuous A *continual* action occurs over a considerable period of time with pauses and intermissions: "He censured her *continually*." A *continuous* action occurs without such pauses: "The roar of the waterfall was *continuous*."

councilor, counselor A *councilor* is a member of a council. A *counselor* advises, particularly on legal matters.

credible, credulous *Credible* means believable (or capable of being believed) and is the opposite of *incredible*. A *credulous* person is willing to believe even when the evidence is not conclusive.

deadly, deathly A poison is *deadly* if it can cause death. Silence is *deathly* if it is like the silence of death, but does not kill.

deduce, deduct To *deduce* means using reasoning to derive a conclusion. To *deduct*, you subtract, e.g., a discount of 10 percent from a price.

deprecate, depreciate To *deprecate* is to express disapproval. To *depreciate* is to lessen the value of an item.

detract, distract Although both of these words mean to draw away from, *detract* has come to mean taking away someone's good name, as in "His constant lying *detracts* from his good qualities." *Distract* means drawing the mind away from whatever it had been thinking, as in "The loud noise *distracted* her, making her lose concentration."

different from *Different from* is the correct idiom, NOT *different than*.

differ from, differ with *Differ from* applies to differences between one person or thing and others: "My car *differs from* his because it is a newer model." *Differ with* means to have a difference in opinion: "I *differ with* him in his views about government."

discover, invent You *discover* something already in existence, but unknown (like electricity); you *invent* a new product, like a video recorder.

discreet, discrete *Discreet* means careful in avoiding mistakes, as in "He was *discreet* in his habits." *Discrete* means separate, or detached, as in "Each grain of rice was *discrete*, not clinging to the rest in a glutinous mass."

disinterested, uninterested *Disinterested* means impartial, showing no preference or prejudice. To be *uninterested* is to be bored, or simply lacking interest.

dissent, descent, descend *Dissent* means disagreement: "Mine was the only vote in dissent of the proposed amendment." *Descent* refers to a decline; fall: "The road made a sharp descent and then curved dangerously to the right." *Descend* means to come down: "They had to descend from the mountain top in darkness."

don't *Don't* is the contraction of *do not*: *I don't, you don't, we don't, they don't*. Do not confuse it with *doesn't*, the contraction of *does not*: *He doesn't, she doesn't, it doesn't*.

dual, duel *Dual* always refers to two things, as in a "dual-control" video game. *Duel* refers to a formal contest with guns or pistols.

due to *Due to* functions like the adjective *attributable* plus the preposition *to*. "The flood was *attributable* to the rapid spring thaw." "The flood was *due to* the rapid spring thaw." If there is no noun like flood for the adjective *due to* to refer to, use the preposition *because of*: "He was late *because of* an accident." Or rephrase the sentence: "His lateness was *due to* an accident."

elicit, illicit *Elicit*, always a verb, means to draw forth or bring out: "Herman can always *elicit* an argument with anyone." *Illicit*, always an adjective, means unlawful: "*Illicit* drugs cause major problems in this country."

eminent, imminent *Eminent* means famous or prominent; *imminent* means soon to take place: "The Christmas season is *imminent*."

enormity, enormousness *Enormity*, used to describe something monstrously evil, should never be confused with *enormousness*, which refers to something of extraordinarily large size.

farther, further *Farther* refers to physical distance: "We will drive no *farther* tonight." *Further* refers to degree or extent: "Let's pursue this argument no *further*."

fewer, less *Fewer* is used in connection with people or with objects which are thought of as individual units: *fewer oranges, fewer children, fewer books, fewer dollars*. *Less* is used in connection with the concept of bulk: *less money, less coal, less weight, less grain*. Notice that most words following *fewer* are plural (*oranges, books, dollars*): most words following *less* are singular (*money, coal, wheat*).

flotsam, jetsam *Flotsam* means wreckage found afloat. *Jetsam*, which comes from the word *jettison*, means objects thrown overboard and then washed ashore.

forceful, forcible One can have a *forceful* personality, but to break down a door violently is to make a *forcible* entry.

former, latter *Former* and *latter* are used to designate one of *two* persons or things: "Of the *two* possibilities, I prefer the *former* to the *latter*." If more than two persons or things are involved, *first* or *first named* and *last* or *last named* are used: "He had a choice of yellow, rose, pink, and brown. He preferred the first and last to the others."

fortuitous, fortunate That which is *fortuitous* happens by accident and may or may not be a favorable event. The word is often misused as a synonym for *fortunate*, but it does not have this meaning.

founder, flounder *Founder*, a nautical verb, denotes a boat collapsing or sinking. Anyone can *flounder*, which means to move clumsily about or to struggle to gain footing: "He *floundered* in the deep mud."

fulsome Never use *fulsome* to mean plentiful; it means excessive and insincere: "Her boss gave *fulsome* praise, which angered her."

***had ought** *Ought* is known as a defective verb because it has only one form and cannot be

used with an auxiliary: "They *ought* (NOT *had ought*) to have told her."

hanged, hung *Hanged* is used in connection with executions: "He was condemned to be *hanged* by the neck until dead." *Hung* denotes any other kind of suspension: "The pictures were *hung* on the wall."

hardly Like *barely* and *scarcely*, *hardly* should not be used with a negative. "He was *hardly* (*barely*, *scarcely*) able to do it." (NOT *not hardly, barely, scarcely*)

healthful, healthy *Healthful* means health-giving: a *healthful* climate. *Healthy* means *in a state of health*: "He was a *healthy* young man."

hypercritical, hypocritical A *hypercritical* person is overly critical; a *hypocritical* individual does not practice what he or are she advises.

imply, infer *Imply* means to throw out a hint or suggestion: "She *implied* by her manner that she was unhappy." *Infer* means to take in a hint or suggestion: "I *inferred* from her manner that she was unhappy."

impracticable, impractical *Impracticable* means impossible to put into practice. *Impractical*, when referring to a person, means one who is incapable of dealing sensibly with practical (or day-to-day) matters. A plan may be *impractical* if it is not profit-making.

intense, intensive *Intense* means something is present to a high or extreme degree, for example, *intense* suffering. *Intensive* means highly concentrated or exhaustive in application, as in the *Intensive* Care Unit of a hospital.

invaluable, priceless Usually, the prefix *in-* indicates a negative, but *invaluable* does not mean "of no value." It means that the value of the object is so great that its worth cannot be evaluated. The word *priceless* has the same meaning: "so great a value that a price cannot be set for it."

its, it's *Its* (no apostrophe) is the possessive case of *it*: "The pig nursed *its* young." *It's* is the contraction for *it is*: "*It's* too late to do anything about it."

kind, sort, type, variety Since these words are singular in number, they should never be prefaced by plural demonstrative pronouns: This *kind of people* (NOT these *kind of people*).

kind of, sort of, type of, variety of Never use *a* or *an* after these expressions. **Kind of a pistol* is confusing because *a* is used for one particular member of a class, whereas *kind of pistol* is preferable because *pistol* by itself correctly refers to the general idea of *pistol*.

lack, absence *Lack* is a deficiency of something needed: "The *lack* of rain ruined the crops." *Absence* is the nonpresence of a thing that may or may not be necessary: "The *absence* of malice in the negotiations between the parties allowed them to move faster."

last, latest *Last* means that which comes at the end: "It is the *last* game of the season." *Latest* is the last in time, but not necessarily the final occurrence: "That was the *latest* insult in a series of indignities."

lay, lie *Lay* and *laid* are the principal parts of the transitive verb that means to put down: "I shall *lay* the rug." "I *laid* the rug." "I have *laid* the rug." *Lie, lay, lain* are the principal parts of the intransitive verb (it cannot take an object) that means to recline or repose: "She *will lie* in the hammock." "She *is lying* in the hammock." "She *lay* in the hammock yesterday." "She *has lain* there all afternoon."

lead, led When pronounced alike, the word *lead* is the metal, *led* is the past tense and past participle of the verb *to lead*.

learn, teach *Learn* means to acquire information or knowledge: "I *learned* my lesson." *Teach* means to impart information or knowledge: "I *taught* him to do it."

liable See *apt*.

like See *as*.

literally, figuratively Unless an event

actually happened (*literally* happened), one speaks of it *figuratively*. One should not say, "We *literally* died laughing." *Figuratively* refers to the use of figures of speech, such as similes or metaphors: "When he forgot his wife's birthday, he was in (NOT *literally*) the doghouse."

mean, median *Mean* is the middle point between extremes, usually the arithmetic *mean* (computed by dividing the sum of quantities in a set by the number of terms in the set). *Median* refers to the middle value in a distribution: "The *median* salary in the organization is larger than half and smaller than half of all the salaries."

meantime, meanwhile The noun *meantime* refers to an action taking place in an interim: "In the *meantime*, he read the novel." The adverb *meanwhile* is almost the same in meaning: "*Meanwhile*, he read the novel."

militate, mitigate *Militate* (connected with *military*) means to have strong influence for or against, usually against: "His grouchy manner *militated* against his success as a salesman." *Mitigate* means to *lessen*: "The cold compress on his leg *mitigated* his suffering."

myself *Myself* (like *yourself, himself, herself, itself, themselves*) is an intensive and reflexive pronoun. It should never be used in a sentence without its corresponding noun or pronoun: "*I myself* will do it." "I hurt *myself*." "They sent for John and *me* (NOT *myself*)."

mysterious, mystic *Mysterious* refers to those phenomena that excite wonder, curiosity, and surprise and that are difficult to explain or understand. A *mystic* purports to have religious experiences of direct association with the deity. Such an occurrence would be called *mystical*.

precede, proceed *Precede* means to go ahead of, as in a line: "Stephanie will *precede* Ralph in the graduation line." *Proceed* means simply to go ahead with an action: "We will now *proceed* with the conferring of the degrees."

presently, at present *Presently* means soon, or shortly: "I will join you *presently*." *At present* means now, currently, at this time: "*At present*, he is in his office."

principal, principle *Principal* is usually an adjective: *principal cities, principal people*. It has become a noun in a few usages where the noun it formerly modified has been dropped. "He was the *principal* (teacher) of the school." "I withdrew the *principal* (amount) and interest from my savings account." "He acted as a *principal* (person) rather than as an agent." The noun *principle* means a basic law or doctrine: "The country was founded on the *principle* that all men are created equal."

rare, scarce *Rare* and *scarce* refer to hard to find items that exist in small quantities. *Rare* usually implies exceptional quality or value: "If it is a really *rare* book, it will be quite expensive." *Scarce* can be applied to ordinary things, usually those that were previously abundant: "Potatoes are usually plentiful in the supermarket, but the drought has made them *scarce*."

reason is because The words *reason is* (*was*, etc.) should be followed by a statement of the reason: "The reason for his failure was illness." "The reason for the strict rules is to enforce discipline." Similar statements can be made by using *because*: "He failed because of illness." "The rules are strict because it is necessary to enforce discipline." *Reason* and *because* convey the same sense. It is illogical to use both words to convey the same meaning.

regardless, irregardless *Irregardless*, a nonstandard word, probably is patterned after *irrespective*. *Regardless*, which means without regard to or despite, is the correct form: "*Regardless* of his frank comments, I like him."

respectable, respectful *Respectable* means "worthy of respect or esteem," as in "She had a *respectable* command of the German language." *Respectful* means "showing respect for something else," as in "The teacher received the *respectful* attention of the class." Many letters are closed with "*Respectfully* yours."

rightfully, rightly *Rightful* or *rightfully* means having a just or legally established claim: "She

was the *rightful* owner of the property." *Rightly* means properly or correctly, without the legal claim: "He *rightly* refused to comment."

same Do not use *same* as a pronoun: "I have your order for the books and will send *them* (NOT will send *same*)."

stationary, stationery *Stationary*, an adjective, means standing still or having a fixed position. *Stationery*, a noun, means writing materials, especially paper.

their, there, they're Be careful to distinguish the spelling of the possessive case of the pronoun *their* (*their* books) from the spelling of the adverb and the expletive *there*, and the contraction *they're*. "I got *there* before I knew it." "*There* are forty grapefruit in the crate." "*They're* waiting for us."

therefor, therefore *Therefor* means for that, for this, for it. *Therefore* means for that reason, hence.

tortuous, torturous *Tortuous* means full or twists or bends: "The car was moving too fast for such a *tortuous*, crooked road." *Torturous* means inflicting great pain in a cruel manner: "The *torturous* devices were everywhere in the prison camps."

unique *Unique* means the only one of its kind: "His was a *unique* personality." It cannot logically be used in a comparative or superlative form. Something may be more or most odd, rare, unusual, peculiar, remarkable, etc., but NOT more or most unique.

who's, whose *Who's* is the contraction for *who is* and *who has*: "I cannot imagine *who's* coming." *Whose* is the possessive form of *who*: "We knew the family *whose* house was robbed."

woman, women Just as the plural of *man* is *men*, so the plural of *woman* is *women*.

X-ray, X ray *X-ray* is a verb that means to expose to the action of X rays; examine, treat, or photograph with X rays; to employ X rays: "I need to X-ray your foot." *X ray* is a noun meaning a photograph obtained by the use of X rays: "Let me look at the X ray."

you're, your *You're* is the contraction of *you are*. *Your* is the possessive form of the pronoun *you*: "*Your* birthday is tomorrow."

5.12 THINGS NOT TO PLACE IN THE STATUTES

5.12.1 Avoid References to Colorado Code of Regulations or the Code of Federal Regulations

References should not be made to a particular citation in the Colorado Code of Regulations (the "CCR") or the Code of Federal Regulations (the "CFR") because the references are subject to being amended or renumbered, thereby creating an out-of-date or obsolete reference in the Colorado Revised Statutes. The other objection to such a practice is that it arguably results in an improper delegation of the general assembly's power to set policy because it shifts the setting of the policy to a different entity to issue the rules. If a drafter is asked to refer to such a rule or regulation, the drafter should refer to rules of the particular adopting agency governing the particular topic and attempt to describe the subject matter of the rules without giving the actual citation.

5.12.2 Avoid References to Trade Names or Brand Names

Drafters should avoid making references 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 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 discovered that "goped" as used in the title of the bill and the bill were not a trade name, but that the hyphenated spelling "go-ped" was a trademark. An amendment was drafted to substitute "motorized scooter" for the term "goped" in the bill. However, since we avoid amending bill titles, the term "goped" was not amended in the title. Another concern is that the term might constitute "special legislation" in violation of Article V, section 25 of the Colorado constitution. The Office is not aware of any legal impediment to using such 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.

5.12.3 Avoid Special Legislation

Drafters should be aware of bill requests that may be considered special legislation once drafted. Section 25 of article V of the Colorado constitution 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."[4] The purpose of such 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 . . . ."[5]

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.[6]

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 challenges a statute enacted by the General Assembly 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.

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[4] 82 C.J.S. *Statutes* § 151 (1999).

[5] *Id.*

[6] *People v. Canister*, 110 P.3d 380, 382-383 (Colo. 2005).

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."[7] 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.'"[8] 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."[9] 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 . . . ."[10] If the court determines that the class is a genuine class, the court will then determine whether the class is reasonable[11]. If there is a rational basis for distinguishing the class involved and treating the members of the class similarly, the legislation will not be deemed special.[12]

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 applied by the courts requires only that the classification created by the General Assembly 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."[13]

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[7] *Id.* at 383, quoting *In re Interrogatory Propounded by Gov.*, 814 P.2d 875, 886 (Colo. 1991).

[8] *People v. Canister*, 110 P.3d at 384, quoting *Greenwood Village v. Petitioners*, 3 P.3d 427, 442 (Colo. 2000).

[9] *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.

[10] *Id*. In *Canister*, the prosecution announced that it would seek the death penalty and the jury found Canister guilty of all charges while the General Assembly was meeting in special session. The General Assembly enacted a statute during the special session allowing a trial judge to determine the death penalty of a person convicted of a capital crime. Previously, Colorado law required a three-judge panel to determine the death penalty in such cases. Canister was awaiting sentencing when the new law became effective. The new law was enacted during a special legislative session as part of a broader sentencing reform statute as a result of the United States Supreme Court's ruling that a similar Arizona law denied defendants a right to a jury trial. At the time the Colorado legislation was passed, the defendant in the case 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.

[11] *Id.* at 383.

[12] *In re Interrogatory*, 814 P.2d at 885.

[13] *Id.* at 885-886.

If a drafter is concerned that a bill may be special legislation, the drafter should notify his or her team leader and should also explain the constitutional prohibition against special legislation to the legislator.

EXECUTIVE BRANCH AGENCIES

6.1 THE ADMINISTRATIVE ORGANIZATION ACT OF 1968

Article 1 of title 24, C.R.S., was enacted in 1968 and implemented the constitutional amendment approved in 1966 calling for the reorganization of the state government's executive branch into not more than twenty principal departments. The article includes a listing of the 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 strictly advisory board or committee);
- Transferring an agency from one department to another; or
- Abolishing an agency.

Section 24-1-105, C.R.S., defines three types of transfers that determine the relationship between an agency and the principal department. It is important to understand that the designation of an agency as a **type 1** or **type 2** agency and that the transfer of an agency by a **type 1** or **type 2** transfer 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 transfers since each agency transferred must be designated as functioning pursuant to a specific type of transfer and each new agency created must be designated as functioning *as if transferred* pursuant to a specific type of transfer.

A **type 1** transfer denotes a relationship in which the subordinate division, board, or other agency exercises its powers, 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** agency - powers which may be exercised in whatever way the agency determines, even without the approval of the executive director - are the promulgation of rules and the rendering of administrative findings, orders, and adjudications.

In a **type 2** transfer, all powers, duties, and functions of the division, board, or other agency belong to the executive director of the department. In both a **type 1** and a **type 2** transfer, the executive director of the department is vested with "budgeting, purchasing, and related management functions".

A **type 3** transfer involves the transfer of *all* functions of an agency to another agency and the abolition of the old agency; it is rarely used.

Type 1, **2**, and **3** transfers *only* apply to executive branch agencies and not to judicial or legislative branch agencies.

6.1.1 Language to Use When Creating a Brand-new Agency

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 to which the agency is being added and must use the somewhat awkward but important phrase "as if [the agency] were transferred by a **type 1** or **type 2** transfer". The practice is that any reference to **type1, type 2** or **type 3** appears in **bold** font. Understanding the history behind this transfer phrase may be helpful. The reorganization of state government in 1968 was based on the transfer concept described in section 24-1-105, C.R.S., which specifies a type of transfer and the creation of a unit of government such as a department, division, or board that has certain powers based upon whether the entity is a **type 1** or **type 2** agency. The interim committee that led to the 1968 reorganization analyzed every unit of state government, consolidated them into seventeen principal departments, came up with the three types of transfers, and decided whether the agency should be a **type 1** or **type 2** entity or whether it should be abolished through a **type 3** transfer. The interim committee recommended and intended that any new agencies created after the reorganization would be created using this same transfer approach and using the three defined types of transfers. After the 1968 reorganization, the drafting practice for creating any new agency was to use the phrase "as if the same were transferred by a **type 1** [or **2**] transfer".

This example of how to create a new agency is based on a bill from 1992, in which the hazardous waste commission was created in the department of health (subsequently renamed the department of public health and environment). Note that the examples in this section were modernized to eliminate the authority verb "shall". The bill creates the new hazardous waste commission by adding a new subsection (8) to section 24-1-119 (8), C.R.S., in the article 1 of title 24, C.R.S., with the following language:

> **24-1-119. Department of health - creation.** (8) THE HAZARDOUS WASTE COMMISSION, CREATED IN PART 3 OF ARTICLE 15 OF TITLE 25, EXERCISES ITS POWERS AND PERFORMS ITS DUTIES AND FUNCTIONS AS IF THE SAME WERE TRANSFERRED BY A **TYPE 1** TRANSFER TO THE DEPARTMENT OF HEALTH.

The bill also creates the hazardous waste commission in the title governing the department in section 25-15-302, C.R.S., using similar language:

> **25-15-302. Hazardous waste commission - creation - membership - regulations - administration.** (1) (a) THERE IS HEREBY CREATED IN THE DEPARTMENT OF HEALTH A HAZARDOUS WASTE COMMISSION...WHICH EXERCISES ITS POWERS AND PERFORMS ITS DUTIES AND FUNCTIONS AS IF IT WERE TRANSFERRED TO SAID DEPARTMENT BY A **TYPE 1** TRANSFER.

For a new agency, the text must refer to the type of transfer and state that the agency exercises its powers, etc., *as if* it were transferred by a **type 1** or **type 2** transfer since a new agency is not actually being transferred but is being created for the first time. If the agency is placed in the department of regulatory agencies, the drafter needs to use the standard language regarding the applicability of the Sunset Law (section 24-34-104, C.R.S.) in the statute governing the agency, add the agency to the list in section 24-34-104, C.R.S., regarding the Sunset law, and add the agency to the section in article 1 of title 24 (section 24-1-122, C.R.S.,) that governs the department of regulatory agencies. If the new agency is a

department, the drafter needs to add an entire new section to article 1 of title 24 and needs to amend section 24-1-110, C.R.S., to add the new department to the list of principal departments.

6.1.2 Language to Use When Transferring Portions of a Department to Another Department

If a bill involves the transfer of an existing agency from one department to another department, the bill must specify that the agency is transferred to the second department by a **type 1** or **type 2** transfer. The drafter needs to amend the appropriate section in article 1 of title 24 for the particular department to which the agency is being transferred and specify the type of transfer. In addition, the relevant subsection, paragraph, or subparagraph that is being transferred **must** be repealed from the section concerning the original department from which the agency is transferred.

Finally, besides amending the appropriate section in the Administrative Organization Act, the drafter must also include similar language defining the type of transfer in the substantive law governing the agency transferred. Drafters need to be aware that there may be more than one place in the organic act governing the agency that needs to be amended and kept current.

An example of the appropriate language to transfer a division from one agency to another is this example based upon the transfer of the highway operations and maintenance division in the former state department of highways to the new department of transportation:

> **24-1-128.7. Department of transportation - creation.** (3) THE DEPARTMENT OF TRANSPORTATION CONSISTS OF THE FOLLOWING DIVISIONS:
>
> (a) HIGHWAY OPERATIONS AND MAINTENANCE DIVISION, THE HEAD OF WHICH IS THE CHIEF ENGINEER. THE HIGHWAY OPERATIONS AND MAINTENANCE DIVISION AND THE OFFICE OF THE CHIEF ENGINEER, CREATED BY PART 1 OF ARTICLE 1 OF TITLE 43, AND THE OFFICE OF THE CHIEF ENGINEER, CREATED BY PART 1 OF ARTICLE 1 OF TITLE 43, AND THEIR POWERS, DUTIES AND FUNCTIONS ARE TRANSFERRED BY A **TYPE 2** TRANSFER TO THE DEPARTMENT OF TRANSPORTATION.

The corresponding amendment to the substantive statute needs to be made as follows:

> **43-1-114. Highway operations and maintenance division - creation.** (2) THE HIGHWAY OPERATIONS AND MAINTENANCE DIVISION AND THE OFFICE OF CHIEF ENGINEER EXERCISE THEIR POWERS AND PERFORM THEIR DUTIES AND FUNCTIONS UNDER THE DEPARTMENT OF TRANSPORTATION AND THE EXECUTIVE DIRECTOR AS IF THE SAME WERE TRANSFERRED TO THE DEPARTMENT BY A **TYPE 2** TRANSFER, AS SUCH TRANSFER IS DEFINED IN THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968", ARTICLE 1 OF TITLE 24.

Note that in this example, the "as if the same were transferred" phrase was used in the substantive statute since the highway operations and maintenance division was a new division.

6.1.3 Eliminating a Department by a Type 3 Transfer

When an agency is abolished, the drafter uses a **type 3** transfer. In this example, the state department of highways was abolished and a new department of transportation was created.

> **24-1-128.7. Department of transportation - creation.** (4) THE STATE DEPARTMENT OF HIGHWAYS, CREATED BY SECTION 24-1-126, PRIOR TO ITS REPEAL IN 1991, AND ITS POWERS, DUTIES, AND FUNCTIONS, ARE TRANSFERRED BY A **TYPE 3** TRANSFER TO THE DEPARTMENT OF TRANSPORTATION, PURSUANT TO THE PROVISIONS OF THIS ARTICLE 1, AND THE STATE DEPARTMENT OF HIGHWAYS IS ABOLISHED.

6.1.4 Transfer of Functions

Occasionally certain functions of one agency are transferred to another agency without the agency itself being transferred. Unless such functions are already specified in article 1 of title 24 (for instance, see section 24-1-120 (3), C.R.S.), it is not necessary to amend article 1.

6.1.5 Transfer of 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 the transfer of agencies involves the transfer of employees, property, contracts, appropriations, and the continuity of administrative rules and regulations. 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 savings clauses and grandfather clauses in section 2.6 "Special Clauses" in Chapter 2 of this manual.

In past attempts to solve the problem of numerous conforming amendments required by a bill transferring agencies or functions some drafters have included a section to the effect that "Whenever in any law concerning _____ reference is made to the division of _____, such term shall be deemed to refer to the division of _____". These attempts are confusing, and the Office of Legislative Legal Services prefers to include specific conforming amendments to all statutory sections affected by the transfer unless such amendments are absolutely not feasible in light of available time. The computer statutory search program makes the location of affected sections much easier.

Colorado currently has nineteen principal departments - one less than the constitutional maximum of twenty principal departments. If twenty departments were to be reached again, the creation of a new department would require an existing one to be abolished. (See section 22 of article IV of the state constitution.)

6.2 THE STATE PERSONNEL SYSTEM

When drafting bills involving the state personnel system, a drafter should keep in mind two provisions of the state constitution concerning the state personnel system that have occasionally caused problems. These provisions are as follows: (1) The provision governing which state employees and officials must be included in the state personnel system; and (2) The provision designating the appointing authority for these employees.

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 (the Public Utilities Commission, the State Board of Land Commissioners, the State Parole Board, the State Personnel Board, and 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 section 1 of article IV 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 constitution; for instance, cabinet

officers, who are exempted by section 22 of article IV, the commissioner of insurance, who is exempted by section 23 of article IV, and other officers named in the state constitution such as the Commissioner of Mines.

It follows that a constitutional exemption from the personnel system must be found if a bill establishes any officer to serve as a gubernatorial appointee with the exception of cabinet members.

Issues arise in connection with the attempt to establish full-time boards whose members are exempt from the personnel system. At the time the personnel system amendment was adopted, the list of exempt boards included virtually all the full-time boards in state government. Section 40-2-101 (2), C.R.S., requires public utilities commissioners to "devote their entire time to the duties of their office to the exclusion of any other employment". The salaries of such commissioners are fixed by the General Assembly on an annual basis and are "for the full-time services of the persons involved". (See section 24-9-102 (2), C.R.S.) Section 17-2-201 (1), C.R.S., provides that parole board members "shall devote their full time to their duties as members of the board". Although not explicitly stated, the constitutional exemption for board members receiving per diem and expense reimbursement has, with one exception, been used exclusively for part-time boards composed of citizen members.

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. Although the other was in effect for a few years and was not challenged, better practice would appear to be not to create full-time boards exempt from the personnel system without a constitutional amendment.

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 of Legislative Legal Services 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 constitution permits full-time state employment outside the personnel system without specification in section 13 of article XII.

The question of inclusion in the personnel system was addressed by an Attorney General's memorandum dated October 26, 1976, which 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 his or her work, selects his 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. Based on the foregoing criteria, it seems probable that a full-time board member would be an employee and not an independent contractor.

Subsection (7) of section 13 of article XII 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.

There are at least two common ways of contravening these provisions. The first occurs when a governor-appointed board or commission is created within a department either by a **type 1** or **type 2** transfer 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 constitution requires that it also be the appointing authority for all the employees of the division. It may not want to be involved in this kind of administrative detail (or in other day-to-day administrative duties). Alternatives are to make the board a part of the office of the executive director, 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, to make that director, who would be under the personnel system, the head of the division. In the latter case, the director would of course have to 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 section 13 (7) 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 section 13 (2) for the entire class of division heads and such an exception was defeated by the voters at the 1976 general election, this reading poses problems for entities like the Colorado Racing Commission, which is specifically named head of the Division of Racing Events. Since the commission is exempt from the personnel system (because it is compensated on a per-diem-plus-expenses basis), it makes no 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.

Statutory provisions concerning appointments that were enacted prior to 1970 (the year section 13 of article XII 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. Suggestions for good models are 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 thereof (part 3 of article 34 of title 24, C.R.S.).

The second problem area is encountered when one attempts to have the executive director of a principal department (who is not within the state personnel system) also hold the office of division director or, conversely, to have a division director act ex officio as the head of a department. The 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 himself 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, 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 in 1995, requires that the executive director of the Department of Administration (now Personnel) be the head of the Division of Administrative Hearings. This case, however, is to be distinguished from the situation in which a position may exist but has not in fact been funded. The director of the Division of Registrations in the Department of Regulatory Agencies is created by statute, but the executive director of the department, for periods in the past, has performed all of the duties connected with the position.

6.3 SUNRISE AND SUNSET LAWS

"Sunrise" describes the administrative and legislative procedure for evaluating the requests of organized professional or occupational groups not currently regulated to be regulated by the state of Colorado. The process is governed by section 24-34-104.1, C.R.S. A discussion of how to draft a sunrise bill is found in section 6.5.6 of the Drafting Manual.

"Sunset" involves the periodic review of state agencies that regulate professions or occupations or specific functions. Agencies or functions are terminated by specified dates unless their life is extended by legislative action. The department of regulatory agencies reviews the agency or function prior to its scheduled repeal and makes recommendations to the general assembly about whether the agency or function should be continued. The process for sunset review is governed by section 24-34-104, C.R.S. The sunset of advisory committees is governed by section 2-3-1203, C.R.S.

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 to ascertain from the sponsor what is 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. 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.

In an effort to maintain consistency in the sequence of termination dates for divisions, boards, and agencies subject to the sunset law, section 24-34-104, C.R.S., contains various subsections categorized by date of repeal and subdivided by department or division in which the board or agency being repealed is found. When drafting a bill that includes a termination, include the new information in the proper subsection. Or, if necessary, add a new subsection that maintains the sequence and format of section 24-34-104, C.R.S.

When a NEW board, division, or agency is created in the department of regulatory agencies, it should be subject to the sunset law, and a bill dealing with this should:

- Add language indicating that the new provisions of section 24-34-104, C.R.S. are applicable to the new entity;
- Add language to section 24-34-104, C.R.S., specifying the repeal date.

Use the canned language as follows for any NEW "sunrise" that creates a new regulatory scheme and adds a sunset/repeal provision, selecting the applicable description for section 24-34-104, and making sure that the repeal date used in the phrase "are scheduled for repeal" in section 24-34-104 and the repeal date used in the organic section are the same:

SECTION 1. 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)].

SECTION 2. In Colorado Revised Statutes, **add** article [__] as follows:

ARTICLE XX
Article Name

12-xx-xxx. Short title. THE SHORT TITLE OF THIS ARTICLE XX IS THE "___ ACT".

..... text of the bill has been omitted for this example ....

12-xx-xxx. Repeal of article. THIS [ARTICLE XX] IS REPEALED, EFFECTIVE [DATE]. BEFORE ITS REPEAL, THIS [ARTICLE XX] IS SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION 24-34-104.

When an agency subject to the sunset law is CONTINUED, the paragraph listing the agency in section 24-34-104, C.R.S., should be repealed and the agency should be relisted in a new subsection with the appropriate repeal date and a corresponding effective date in a similar manner as for a new agency. 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 two were not incorporated in the 2016 legislation. In order to give effect to both improvements, sunset bills that continue an EXISTING government agency or agency should follow this model:

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 ITS repeal, THE DEPARTMENT OF REGULATORY AGENCIES SHALL REVIEW the office and the commission ~~shall be reviewed as provided for~~ 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.

One issue for sunset bills is what to do with the repeal language in the introductory portion of subdivisions in section 24-34-104. The new sunset canned language recommends using the phrase "are scheduled for repeal" instead of "will repeal". Due to the volume of bills, and based on past recommendations from the Publications Team, the Office has decided not to change the introductory portion to the new canned language in those subdivisions in subsections that are scheduled to automatically repeal in two years. For example, for sunset bills for the 2018 session that have 2018 sunset dates, do not change the introductory portion in section 24-34-104 to the new canned language.

In addition, in organic statutes that describe an existing function or regulatory scheme for review, do not change the description of the function or regulatory scheme 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.

When a board or agency is in its WINDUP period under sunset and is technically repealed, it is reestablished rather than continued. The entire section, part, or article must be recreated and reenacted.

> CONCERNING THE REAUTHORIZATION OF THE REGULATION OF REAL ESTATE APPRAISERS BY THE BOARD OF REAL ESTATE APPRAISERS THROUGH A RECREATION AND REENACTMENT OF THE RELEVANT STATUTES INCORPORATING NO SUBSTANTIVE AMENDMENTS OTHER THAN THOSE APPROVED DURING THE FIRST REGULAR SESSION OF THE 69TH GENERAL ASSEMBLY.
>
> *Be it enacted by the General Assembly of the State of Colorado:*
>
> **SECTION 1.** In Colorado Revised Statutes, **recreate and reenact, with amendments,** part 7 of article 61 of title 12 as follows:
>
> PART 7
> REAL ESTATE APPRAISERS
>
> **12-61-701. Legislative declaration.** THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT SECTIONS 12-61-702 TO 12-61-723 ARE ENACTED PURSUANT TO THE REQUIREMENTS OF THE "REAL ESTATE APPRAISAL REFORM AMENDMENTS", TITLE XI OF THE FEDERAL . . .
>
> . . . . . text of the bill has been omitted for this example . . . . . .
>
> (b) **[Formerly 12-61-703 (2.5)]** THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT THE ORGANIZATION OF THE BOARD UNDER THE DIVISION AS A **TYPE 1** AGENCY WILL PROVIDE THE AUTONOMY NECESSARY TO AVOID POTENTIAL CONFLICTS OF INTEREST BETWEEN THE RESPONSIBILITY OF THE BOARD IN THE REGULATION OF REAL ESTATE APPRAISERS . . .
>
> . . . . . text of the bill has been omitted for this example . . . . . .
>
> (13) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2018. BEFORE ITS REPEAL, THE CERTIFICATION OF REAL ESTATE APPRAISERS IS SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION 24-34-104, C.R.S.

For an example of a bill that recreated and reenacted a sunset provisions and that also made substantive changes, see Senate Bill 13-238.

In working with bills either continuing or reestablishing any division, board, or agency, special attention should be given 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" (section

24-34-104), include in the title of the bill some mention of the name of the division, board, or agency.

6.4 SUNSET OF ADVISORY BODIES

In the same manner as the general sunset law, section 2-3-1203, C.R.S., requires that all newly created advisory committees have a life not to exceed ten years and a corresponding repeal provision in the statutory section creating the committee. In addition, section 2-3-1203 (3), C.R.S., must be amended to add the advisory committee to the appropriate year for termination contained in that section.

If the bill sponsor's goal is to create a truly temporary advisory committee that repeals on a particular date in the future without going through any sunset review, the drafter should include the following language with the repeal provision:

> Notwithstanding section 2-3-1203, the advisory committee is not subject to the review required in section 2-3-1203 prior to repeal.

6.5 OTHER SPECIAL STATUTORY REQUIREMENTS

Pursuant to direction from the legislative leadership, the Office of Legislative Legal Services is responsible for informing members of bills that are affected by certain statutory requirements in addition to the regular legislative procedures. Drafters should identity six types of bills subject to special statutory requirements in addition to regular legislative procedures. 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. Examples of these letters are in the memo section of this manual. The last category of special requirements, sunrise issues, discussed in section 6.5.6, below, does not require a letter but does require the drafter to be aware of the statutory procedures for new regulation of profession or occupation not previously regulated.

6.5.1 Health Care Coverage Mandates

Section 10-16-103, C.R.S., 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. This statute is silent on what, if anything, the legislative committee of reference must do with the report. An office memorandum detailing how the General Assembly should implement section 10-16-103, C.R.S., is found in Appendix J of this manual.

6.5.2 Impacts on Criminal Justice System

Section 2-2-701, C.R.S., requires any 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 to 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 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

Section 10 (3) of article VI of the Colorado constitution requires a two-thirds vote of the members of each house 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. See "Mandatory Cover Letters for Bills" in Appendix J of this manual for the examples of these letters.

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 any 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.

6.5.6 "Sunrise" Issues for New Regulation of a Profession or Occupation Not Previously Regulated

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 shall be 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; and
>
> (3) Whether the public can be adequately protected by other means in a more cost-effective manner.

Further, section 24-34-104.1, C.R.S., requires the department to submit a report no later than 120 days after receipt of a sunrise application to the General Assembly and discusses the introduction of legislation based on such report. 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 may decline to conduct reviews in the case of a repeat application with no new information provided. If the department declines to conduct an analysis and evaluation for this reason, the proponents are deemed to have complied with the requirements of this section. In cases where a profession or occupation is posing an imminent threat to the public's health, safety or welfare, the department may notify the proponents and recommend that the professional or occupational group be regulated by the state, without completing an analysis and evaluation.

If the department 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. See section 24-34-104.1, C.R.S., for more information about the legislative council's role in the hearings.

6.5.7 Legislative Appointees to Boards, Commissions, and Committees - 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. Section 2-2-325, C.R.S., provides:

> **2-2-325. Legislative appointees - boards and commissions - other governmental bodies.** *Unless otherwise provided by law*, appointments or reappointments of persons to a board, commission, committee, council, panel, or authority by the speaker of the house of representatives, the president of the senate, the majority leader of the house of representatives, the majority leader of the senate, the minority leader of the house of representatives, or the minority leader of the senate shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments or reappointments shall be made as soon as practicable after such convening date. The person making the original appointment or reappointment shall fill any vacancy by appointment for the remainder of an unexpired term. Members appointed or reappointed by the speaker, the president, the majority leader of the house of representatives, the majority leader of the senate, the minority leader of the house of representatives, or the minority leader of the senate shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed. (*Emphasis added*)

6.5.8 Legislative Appointees to Boards, Commissions, and Committees - 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. Section 2-2-326, C.R.S., provides:

> **2-2-326. Compensation and expenses for members appointed to and serving on state entities - definition.** (1) *Notwithstanding any law to the contrary:*
>
> (a) While appointed to any state entity and serving on any state entity during regular and special sessions of the general assembly, in addition to the base compensation specified in section 2-2-307 (1), current members of the general assembly are entitled to receive only the per diem lodging and expense allowances and the travel expenses authorized by section 2-2-317; and
>
> (b) While appointed to and serving on any state entity when the general assembly is in recess for more than three days or is not in session, in addition to the base compensation specified in section 2-2-307 (1), current members of the general assembly are entitled to receive the amount specified in section 2-2-307 (3)(a) for necessary attendance at meetings of the state entity and reimbursement for all actual and necessary travel and subsistence expenses incurred in connection with attendance at meetings of the state entity. Mileage rates shall not exceed those authorized for the executive department. All compensation paid and reimbursements made pursuant to this subsection (1)(b) shall be paid from appropriations made to the legislative department. (*Emphasis added*)

(2) For purposes of this section, "state entity" means any board, commis-sion, committee, task force, authority, enterprise, council, working group, re-view team, or other entity created or authorized by statute on which current members of the general assembly are statutorily required to be appointed to serve; except that "state entity" does not include the Colorado commission on uniform state laws created in section 2-3-601 (1) or the education commission of the states created pursuant to section 24-60-1201.

6.5.9 Cross-reference Needed for a Bill that Grants Any Person or Entity the 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 the 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 require a provision that authorizes a state agency to promulgate rules or regulations. For example, this may occur when a 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 following items.

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. *Dodge v. Department of Social Services*, 657 P.2d 969 (Colo. App. 1982); *Elizondo v. State,* 194 Colo. 113, 570 P.2d 518 (1978). Otherwise, the delegation may constitute an unconstitutional delegation of legislative power. The test for 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. *Cottrell v. City and County of Denver*, 636 P.2d 703 (Colo. 1981).

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 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. See Sutherland Stat. Const. § 4.15.

6.6.2 Drafting Considerations

The drafter should consider the following factors when drafting a rule-making provision:

6.6.2.1 Generally

What specific individual, board, or other entity has rule-making authority? A delegation of rule-making authority to a "department" or "division" may create ambiguity and should be avoided.

Which entity or officer in the state agency has historically been given rule-making authority? Are there existing rule-making provisions for that agency that may provide examples?

Is the rule-making authority mandatory or discretionary?

Determine if the state agency will be or has been created by a **type 1** or a **type 2** transfer. Section 24-1-105, C.R.S., describes these types of transfers and should be reviewed in connection with this determination. Under section 24-1-105 (1) and (4), a **type 1** agency 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** agency to promulgate rules is exercised by the head of the principal department to which the agency is allocated.

Therefore, be aware that a delegation of rule-making authority to a **type 2** agency may raise issues as to whether that delegation is intended to be consistent with section 24-1-105, C.R.S. 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** agency, the following options should be considered:

- Rule-making authority may be delegated to the executive director of the principal department in which the **type 2** agency is located. Two examples of such a delegation are as follows:

Example 1

> **X-X-XXX. Powers and duties of executive director.** (1) In order to perform his or her duties, the executive director has the power to:
>
> (a) Promulgate 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;
>
> * * *

Example 2

X-X-XXX. Surplus and excess equipment and supplies. (1) The executive director shall promulgate rules to be utilized by the division in governing:

(a) The sale, lease, or disposal of surplus equipment and supplies by public auction or competitive sealed bidding, but no public employee, which for the purposes of this subsection (1) includes elected officials, is entitled to purchase any such equipment and supplies unless such purchase satisfies the conditions specified in subsection (2.1) of this section; and

(b) The transfer of excess equipment and supplies.

* * *

- 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** agency. An example of such a delegation is as follows:

Example 3

X-X-XXX. 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 X-X-XXX recommends the establishment of child care facilities in nursing homes, shall promulgate 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 shall include, but need not be limited to, the following:

* * *

- Rule-making authority may be delegated to a **type 2** agency when the delegation contains a specific exception to the general rule in section 24-1-105 (4), C.R.S., that rule-making delegated to a **type 2** agency is to be exercised by the head of the principal department. An example of such a delegation is as follows:

Example 4

X-X-XXX. Division of gaming - creation. There is hereby created, within the department of revenue, the division of gaming, the head of which is the director of the division of gaming. The director shall be appointed by, and is subject to removal by, the executive director of the department of revenue. The division of gaming, the Colorado limited gaming control commission created in section X-X-XXX, and the director of the division of gaming shall exercise their respective powers and perform their respective duties and functions as specified in this article 47.1 under the department of revenue as if the same were transferred to the department by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24; except that the commission shall have full and exclusive authority to promulgate rules in accordance with article 4 of title 24 related to limited gaming without any approval by, or delegation of authority from, the department.

- Rule-making authority may be delegated to a specific person or entity in the **type 2** agency 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 (4), 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:

Example 5

> **X-X-XXX. Rules.** The director of the division of local government of the department of local affairs may, after consultation with the affected departments or agencies, if any, promulgate, adopt, amend, and repeal such rules as may be necessary for the implementation and administration of the grant program.

- If the delegation of rule-making authority is to a newly created agency, it may be appropriate to establish the agency by a **type 1** transfer instead of a **type 2** transfer 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** agency that actually has **type 1** powers, it may be appropriate to amend the statute and change the agency to a **type 1** agency.

Rule-making authority may be inappropriate for an advisory committee or board.

6.6.2.2 Information From Sponsor

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? Examples of rule-making provisions granting limited or specific authority are contained in Appendix H of this manual.

If possible, get a feel for what the agency intends to do through future rule-making, see if it matches the sponsor's intent, and draft the provision to specifically target the rule-making authority to those intentions.

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 contained in Appendix H of this manual.

6.6.2.3 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 where 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) of the State Administrative Procedure Act provides that "rule" includes "regulation". Therefore, it is unnecessary to authorize an agency to promulgate "rules and regulations". The statutes, however, contain many examples of state agencies or agency directors that are authorized to make or promulgate "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:

Example 6

> **X-X-XXX. Rules.** The commissioner may promulgate rules necessary for the administration and enforcement of this article. Such rules shall be promulgated in accordance with article 4 of title 24.

Example 7

> **X-X-XXX. Rules.** (1) In order to carry out the purposes of this part 15, the state manager shall promulgate 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 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.) in grants of rule-making authority to a state agency (see Examples 6 and 7 above). Section 24-4-103 (1), C.R.S., and section 24-4-107, C.R.S., are very clear that any executive branch agency adopting rules must follow the State Administrative Procedure Act.

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. Please see below regarding permissive and mandatory rule-making. 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 APA is unnecessary.

Permissive rule-making. Where the grant of rule-making authority provides that the state agency *may* make rules, the grant of authority should be contained 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:

Example 8

> **X-X-XXX. Rules.** The executive director may promulgate rules necessary for the administration of this article 1. Such rules shall be promulgated in accordance with article 4 of title 24.

Example 9

> **X-X-XXX. Rules.** Pursuant to article 4 of title 24, the director may promulgate 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:

Example 10

> **X-X-XXX. Rules.** The executive director may promulgate rules necessary for the administration of this article 3 in accordance with article 4 of title 24.

Example 10 is incorrect because it could mean that compliance with the State APA is permissive but not mandatory.

Mandatory rule-making. Where the grant of rule-making authority provides that the agency *shall* make rules, the cross-reference to the state APA may be included in the grant (see Example 7 above) or the cross-reference may be stated separately as follows:

Example 11

> **X-X-XXX. Rules.** The director shall promulgate rules for the licensure of applicants under this part 2. Such rules shall be promulgated in accordance with article 4 of title 24.

Example 12

> **X-X-XXX. Rules.** The commissioner shall promulgate rules necessary for the administration and enforcement of this article 5 and in accordance with article 4 of title 24.

6.6.4 Overly Broad Grants of Rule-making Authority

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 above, such standardless grants of authority are potentially unconstitutional.

6.6.5 Ambiguous Statements of Delegation

In referring to administrative rule-making, use the verb "promulgate" and refer to "rules". If

the sponsor wants an agency to engage in formal rule-making, say "The department shall promulgate rules..." Do not substitute an inaccurate or ambiguous statement such as "The department shall adopt standards..." or "The department shall establish guidelines..." The presumption should be that any standards or guidelines are to be adopted through the "State Administrative Procedure Act". However, if the sponsor does not want to require rule-making, but wants the agency to establish policies or procedures make that clear by stating that the agency need not promulgate the required procedures, standards, or guidelines as rules under the "State Administrative Procedure Act".

6.6.6 Additional Examples

Additional examples of statutory provisions authorizing rule-making are contained in Appendix H of this manual.

6.6.7 Rule Review

When a state agency with statutory rule-making authority promulgates rules, it must do so pursuant to the "State Administrative Procedure Act", which is contained in 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 of Legislative Legal Services for review by staff 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.

6.7 CREATION OF ENTITIES THAT ARE TEMPORARY IN NATURE

Occasionally, drafters are asked to create temporary boards, commissions, committees, or task forces that are 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 following issues should be considered in creating temporary entities. Sample language for temporary entities is included in Appendix F of this manual.

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.). A temporary board is one that is established for a single, one-time only purpose and that can accomplish its purpose within a relatively short period of time.

6.7.2 Membership

The following issues relating to membership should be considered:

1. Establish the number of members.

2. Establish qualifications for appointments (optional):

    a. Political balance;

    b. Geographic representation;

    c. Ethnic balance;

    d. Representation from specific groups, occupations, fields of knowledge or training, etc.

3. Establish how appointments are made and when.

4. Establish chair of board.

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. (Note: this will drive a fiscal note - the fiscal note 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.

6.7.3 Meetings

Establish the minimum number of meetings (this will affect the fiscal note) and when the first meeting should be held.

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 which of the legislative or executive agencies will serve as the lead staff agency.

3. 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.

6.7.6 Recommendations

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?

    b. 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?

6.7.7 Sunset provisions or termination dates

Establish a repeal date for the section establishing the board in accordance with sunrise/sunset provisions. 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.

6.8 REFERENCES TO UNITS OF GOVERNMENT NOT CREATED BY STATUTE OR REFERENCES TO NON-GOVERNMENTAL GROUPS OR 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 contained 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 contain 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 non-governmental 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 section 25 of article V of the constitution; (2) Is there a violation on the constitutional prohibition on appropriations to private institutions in section 34 of article V of the constitution; (3) Is there an unlawful delegation in violation of section 35 of article V of the constitution? 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 can not be required to continue or begin to perform certain functions. The group or entity might be dissolved or simply go out of business. If a sponsor requests that a bill contain 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 BY EXECUTIVE BRANCH AGENCIES AND BY THE JUDICIAL BRANCH

Pursuant to the "Information Coordination Act", section 24-1-136 (11), C.R.S., effective July 1, 1996, whenever any report is required or allowed to be made to the general assembly by an executive agency or the judicial branch on a periodic basis, the requirement for such report shall expire 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 four years pursuant to this statute. If the bill sponsor wants the reporting requirement to continue for more than four years, 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.

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 four years, the drafter should include a repeal of the periodic reporting as shown in the following example.

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 & GIVING INITIAL JURISDICTION TO THE COLORADO COURT OF APPEALS

Pursuant to section 1 of article VI of the state constitution, the General Assembly created an intermediate court of review known as the Colorado Court of Appeals. See section 13-4-101, C.R.S. By case law, the General Assembly's authority to determine the jurisdiction of the Court of Appeals is exclusive and is set forth in section 13-4-102, C.R.S. If the drafter provides for judicial review by the Court of Appeals of a final decision by an executive branch agency, the drafter needs to amend section 13-4-102 (2), C.R.S., to specifically give the court initial jurisdiction over the appeal.

6.11 RECOMMENDED LANGUAGE FOR CRIMINAL BACKGROUND CHECKS

Sometimes a bill sponsor wants to impose a statutory requirement that a licensee must undergo 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. This is the recommended language to use for a criminal background check and is available in an Office macro:

> (__) With the submission of an application for a license granted pursuant to this [C.R.S. subdivision], each applicant shall submit a complete set of his or her fingerprints to the [name of entity]. The [name of entity] shall submit the fingerprints to the Colorado bureau of investigation for the purpose of conducting fingerprint-based criminal history record checks. The Colorado bureau of investigation shall forward the fingerprints to the federal bureau of investigation for the purpose of conducting fingerprint-based criminal history record checks. The [name of entity] may acquire a name-based criminal history record check for an applicant or a license holder who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. An applicant who has previously submitted fingerprints for state or local licensing purposes may request the use of the fingerprints on file. The state licensing authority or local jurisdiction shall use the information resulting from the fingerprint-based criminal history record check to investigate and determine whether an applicant is qualified to hold a state or local license pursuant to this [C.R.S. subdivision]. The [name of entity] may verify the information an applicant is required to submit. The applicant shall pay the costs associated with the fingerprint-based criminal history record check to the Colorado bureau of investigation.

The provision should address who is responsible for paying the cost of the background check. The last sentence is optional and is one example of how to cover the cost of the background check. The drafter should check that this is how the sponsor wants the cost to be covered.

FUNDING: APPROPRIATIONS, TRANSFERS, AND SPECIAL FUNDS

7.1 INTRODUCTION

The drafter should carefully consider the funding implications of each bill: Will the bill cost money to implement? Where will the money come from? In many cases, it will be necessary to appropriate money in the bill to implement its provisions. In some cases, it will be necessary to establish a mechanism that provides a source of revenue to fund the bill, and in other cases it may be desirable to create a special fund to hold the revenue collected to fund the bill. This section will address the drafting of appropriation sections and other provisions that establish special funds such as "cash funds".

7.2 APPROPRIATIONS GENERALLY

7.2.1 Constitutional Background - Meaning of "Appropriation"

Section 33 of article V of the state 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 to constitutional limitations. *Colorado General Assembly v. Lamm,* 704 P.2d 1371, 1380 (Colo. 1985); *MacManus v. Love,* 179 Colo. 218, 499 P.2d 609 (1972). The plenary power of the legislature 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." *Colorado General Assembly v. Lamm,* 700 P.2d 508 (Colo. 1985).

An "appropriation" is legal authority for an agency to expend a specified sum of money for a specified purpose, and a state agency may only expend money from the state treasury if the agency has a legislative appropriation for such purpose or if the 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 - 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 is drafted and sponsored by the Joint Budget Committee. Under section 32 of article V of the state 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 the current 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 nothing besides one or more appropriations.

7.2.3 Appropriation Sections in Substantive Bills

Often a bill that amends the permanent statutes also includes an appropriation section to ensure that money are 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. The appropriation section may be included in the bill as introduced, but in most cases the section will be added by the Appropriations Committee.

7.2.4 Additional Constitutional Considerations

The drafter should become familiar with several constitutional provisions that specifically address appropriations. These are: Section 32 of article V, which imposes the single-subject rule on all appropriations bills other than the long bill; section 34 of article V, which prohibits appropriations to private or religious groups; and section 18 of article X and section 2 of article XXIV, which concern the disposition of excise taxes on motor fuels and other sales. While appropriations cannot be made directly to private groups or individuals, money can be appropriated to state agencies that purchase services from, or make grants and loans to, private groups or individuals. If a 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 several statutory provisions that relate to the appropriations process. For reference, some of these sections are:

Section	Subject
2-2-703	Funding must be provided in bills that result in net increase in periods of imprisonment in state correctional facilities
2-4-215	Future general assemblies not bound by legislation requiring an appropriation
24-77-106 43-1-112.5	Annual allowable cash fund revenues and expenditures - higher education
24-22-115 to 24-22-116	Tobacco litigation settlement cash fund and trust fund

Section	Subject
24-36-102	Principal function of treasury department is receipt of state money
24-36-103	Fees and taxes collected by state agencies must be transmitted to the treasury department
24-36-114	Interest earned on state money must be credited to general fund, unless otherwise expressly provided by law
24-37-Part 2 and Part 3	Office of state planning and budgeting charged with recommending legislative and executive actions to achieve desired state objectives and helping the governor prepare the annual executive budget
24-75-102	Reversion of unexpended appropriations; closing of books in 35 days
24-75-105 to 24-75-111	Transfers of state money - expenditures in excess of appropriations
24-75-201	General fund created - all state revenues required to be credited thereto unless otherwise provided by law
24-75-201.1	Restrictions on state general fund appropriations - required general fund reserve
24-75-203	Loans and advances to state agencies
24-75-212	Legislative reporting of federal money
24-75-Part 3	Capital construction fund
24-75-402	Limits on uncommitted cash fund reserves - reductions in fees
24-75-Part 6	Legal investments of public funds

Section	Subject
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))
24-77-101 et seq.	Implementation of section 20 of article X of the state constitution (TABOR)
24-77-106	Annual allowable revenues and expenditures - all state departments
24-82-102	State acquisition of real property
24-82-Part 7	Master leasing
24-82-Part 8	State acquisition of real or personal property - lease-purchase agreements
43-1-106 (8)(h), 43-1-113	State highway funds and budgets
43-1-112.5	Annual allowable revenues and expenditures - transportation
43-4-201	Highway users trust fund created - limitations on appropriations ("off-the-tops")

7.3 CONSIDERATIONS IN DRAFTING APPROPRIATIONS PROVISIONS

7.3.1 Indicating Appropriations in Bill Titles

The title of any bill that contains an appropriations section that makes or reduces an appropriation should indicate that fact. Depending on the type of section, the drafter should add one of the following trailers at the end of the title:

- "..., AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION." -- This phrase is used for a bill that makes a new appropriation or increases an existing appropriation.

- "..., AND, IN CONNECTION THEREWITH, REDUCING AN APPROPRIATION." -- This phrase is used for a bill that reduces an existing appropriation.

- "..., AND, IN CONNECTION THEREWITH, MAKING AND REDUCING APPROPRIATIONS." -- This phrase is used 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 the new program created in the bill.

The first two trailers should always be written in the singular form. In some cases, the correct appropriation phrase can be added to an existing trailer.

If the introduced version of the bill includes an appropriation section, the correct appropriation trailer should be included in the bill title. Similarly, any amendment that adds an appropriation section to a bill should include language that amends the title of the bill to indicate the addition of the appropriation section. The amendment to the title appears last in the amendment.

Some appropriation sections in a bill do not make or reduce an appropriation. For example, an appropriation section may be included to adjust the number of FTE or to identify federal funds that are noted for informational purposes only. In this instance, a 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 that are discussed in detail in 7.3.4 to 7.3.8 of this Chapter:

1. The *time period* during which the money appropriated is available for expenditure;
2. *From where* the money is appropriated - a special fund or the general fund (for example, "from the general fund" or "from the license plate cash fund created in section 42-3-301 (1)(b), C.R.S.)";
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 clauses. Example:

> **SECTION _. Appropriation.** For the 2015-16 state fiscal year, $73,972 is appropriated to the department of public health and environment for use by the prevention services division. This appropriation is from the general fund and is based on an assumption that the division will require an additional 0.9 FTE. To implement this act, the division may use this appropriation for the suicide prevention program.

The first sentence describes the fiscal year, the amount of the appropriation, and the department. If the drafter needs to identify a specific division or other departmental unit to use the appropriation, then it should be identified after the department with the phrase "for use by the division of ___." The result is that with a 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 statutory citation for the fund will be identified, and the citation can be attributed to "C.R.S.", which is an exception to the general rule to fully identify the "Colorado Revised Statutes" in nonstatutory materials. It is unnecessary to have a citation for the general fund. Also, rather than "appropriating" an FTE, it describes the associated FTE consistent with the definition of "FTE" that applies to the Long Bill, which complies with Colorado case law. The FTE should be attributed to the division or other departmental unit if one is identified in the first sentence.

The third sentence specifically identifies how the department is permitted to use the appropriation. Again, if a division or departmental unit is identified in the first sentence, it 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. A 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."

Prior to 2015, appropriation clauses included the following three phrases: "In addition to any other appropriation", "not otherwise appropriated", and "or so much thereof as may be necessary." During the 2015 session, the General Assembly enacted S.B. 15-098 which codifies the application of these phrases to all future appropriation clauses. (See section 24-75-112.5, C.R.S.) This means the phrases will still apply to, but not clutter, each clause. In addition, this section also includes a definition of the abbreviation "C.R.S." so that it can be used in the clauses.

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 funds are intended to be available for the fiscal year beginning on the July 1 next following. The better practice is to include the phrase "For the 2015-16 state fiscal year,". Example:

> **SECTION _. Appropriation.** For the 2015-16 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 the following appropriation clause:

> **SECTION _. Appropriation.** For the 2014-15 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 an 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, 2015, is further appropriated to the department for the 2015-16 state fiscal year for the same purpose.

An example of this appropriation clause that applies to the remainder of the fiscal year beginning on July 1, 2015, and rolls forward to the fiscal year beginning on July 1, 2016, can be found in section E.6.3 in Appendix E of this manual.

7.3.4.2 Reversion of Unexpended Appropriations

Pursuant to section 24-75-102, C.R.S., the unexpended amount of every appropriation reverts to the fund from which the appropriation was made at the end of the fiscal year for which the appropriation was made unless otherwise provided by law (such as in the statute governing the fund from which the appropriation was made). Examples of exceptions to this rule are sections 24-37.5-112 (2) and 24-50-104 (1)(j), C.R.S., which respectively allow appropriations for information technology services and for personal services to revert to different cash funds.

In addition, money appropriated from the general fund that would otherwise revert to the general fund may be transferred 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.

7.3.4.3 Special Rule for Certain Corrections Bills

Section 2-2-703, C.R.S., requires any bill 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 will vary 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, a 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 and operational costs for the first five fiscal years in which there is a fiscal impact. 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 to include the appropriation trailer in the bill title of the introduced bill. The trailer should be added with the amendment in the Appropriations Committee, assuming that there is an appropriation needed.

In the Appropriations Committee, the drafter or 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 starting in 2015:

17-18-117. Appropriation to comply with section 2-2-703 - [HB/SB] 15-#### - repeal. (1) PURSUANT TO SECTION 2-2-703, THE FOLLOWING STATUTORY APPROPRIATIONS ARE MADE IN ORDER TO IMPLEMENT [HOUSE/SENATE] BILL 15-___, ENACTED IN 2015:

(a) FOR THE 2015-16 STATE FISCAL YEAR, _____ 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 2016-17 STATE FISCAL YEAR, _____ 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 2016-17 STATE FISCAL YEAR, _____ DOLLARS IS APPROPRIATED TO THE DEPARTMENT FROM THE GENERAL FUND.

(c) (I) FOR THE 2017-18 STATE FISCAL YEAR, _____ 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 2017-18 STATE FISCAL YEAR, _____ DOLLARS IS APPROPRIATED TO THE DEPARTMENT FROM THE GENERAL FUND.

(d) (I) FOR THE 2018-19 STATE FISCAL YEAR, _____ 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 2018-19 STATE FISCAL YEAR, _____ DOLLARS IS APPROPRIATED TO THE DEPARTMENT FROM THE GENERAL FUND.

(e) (I) FOR THE 2019-20 STATE FISCAL YEAR, _____ 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 2019-20 STATE FISCAL YEAR, _____ DOLLARS IS APPROPRIATED TO THE DEPARTMENT FROM THE GENERAL FUND.

(2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2020.

The drafter 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 that would be included in the bill:

SECTION _. In Colorado Revised Statutes, 24-75-302, **amend** (2) introductory portion; and add (2)(aa), (2)(bb), (2)(cc), (2)(dd), and (2)(ee) as follows:

24-75-302. Capital construction fund - capital assessment fees - calculation - repeal. (2) On July 1 of each year through ~~July 1, 2014~~ JULY 1, 2019, the state treasurer and the controller shall transfer a sum as specified in this subsection (2) out of the general fund and into the capital construction fund as moneys become available in the general fund during the fiscal year beginning on said July 1. 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:

(bb) ON JULY 1, 2015, _____ DOLLARS PURSUANT TO ?.B. 15-____, ENACTED IN 2015;

(cc) ON JULY 1, 2016, _____ DOLLARS PURSUANT TO ?.B. 15-_____, ENACTED IN 2015;

(dd) ON JULY 1, 2017, _____ DOLLARS PURSUANT TO ?.B. 15-_____, ENACTED IN 2015;

(ee) ON JULY 1, 2018, _____ DOLLARS PURSUANT TO ?.B. 15-_____, ENACTED IN 2015;

(ff) ON JULY 1, 2019, _____ DOLLARS PURSUANT TO ?.B. 15-_____, ENACTED IN

2015.

Over time, the General Assembly has developed a *de minimis* exception to the statutory appropriation requirement. In that circumstance, a 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 _____, C.R.S., 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 passage 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.

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 Certain Capital Construction Bills

In accordance with the practice used by the Joint Budget Committee for capital construction appropriations in the long bill, the drafter should indicate in the appropriation section of any substantive law bill that makes an appropriation for a capital construction 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 2015-16 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 state general fund or from a special fund. For a discussion of the funding of bills through special funds, see section 7.5.

Section 24-75-201.1, C.R.S., imposes a limitation on general fund appropriations. As a general rule, general fund appropriations cannot exceed 5% of Colorado personal income.

7.3.5.2 Bills Making Long Bill Adjustments

Bills sometimes include "long bill adjustments" in their appropriation sections. Typically,

such bills will cost money to implement but will also save money in other governmental programs. Thus, these bills 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 long bill cannot be amended directly since it is not yet law.) This type of appropriation clause should generally be used only if part of the appropriation decreases a line item in the long bill.

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 as 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, on the assumption that the wording of the line items will be similar in both long bills. Example:

> **SECTION _. Appropriation - adjustments to 2015 long bill.** (1) To implement this act, appropriations made in the annual general appropriation act to the department of _____ for the 2015-16 state fiscal year are adjusted as follows:
>
> (a) The general fund appropriation for water quality control division, administration, personal services, is decreased by $8,955, and the related FTE is decreased by 0.3 FTE;
>
> (b) The cash funds appropriation from the water quality control fund created in section 25-8-502 (1)(c), C.R.S., for clean water program, operating expenses, is decreased by $35,772, and the related FTE is decreased by 2.5 FTE; and
>
> (c) The general fund appropriation for drinking water program, operating expenses is increased by $34,700, and the related FTE is increased by 1.5 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 one to the 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 his or her bill may be competing with several other bills for the use of the savings. Example:

> **Appropriation - legislative intent.** (1) For the 2015-16 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 [department/other] will require an additional ____ FTE. To implement this act, the [department/other] may use this appropriation for _____.
>
> (2) The appropriation made in subsection (1) of this section derives from savings generated from the implementation of the provisions of [House/Senate] Bill 15-____, enacted in 2015.
>
> **Effective date.** (1) Except as specified in subsection (2) of this section, this act takes effect _____, 2015.
>
> (2) This act takes effect only if:
>
> (a) The net reduction in the appropriation(s) from the general fund made in

> [House/Senate] Bill 15-____ is equal to or greater than the amount of the general fund appropriation made in subsection _ of section ___ of this act;
>
> (b) [House/Senate] Bill 15-_____ 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, 2015, 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, drafters are advised to communicate with JBC staff when incorporating these provisions in a bill. Drafters making any substantial deviation from the recommended language should consult with senior staff in the Office prior to creating a new type of clause or contingency.

7.3.5.4 Federal Funds

Under a line of Colorado Supreme Court cases interpreting the state constitution, the General Assembly generally lacks power to appropriate federal funds. See *Colorado General Assembly v. Lamm*, 738 P.2d 1156 (Colo. 1987); annotation to section 24-76-101, C.R.S. Thus, drafters should not draft appropriation sections that appropriate federal funds. However, the General Assembly may still 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, the following section should be included in the bill:

> **SECTION _. Federal funds.** For the 2015-16 state fiscal year, the general assembly anticipates that the department of _____ will receive $_____ in federal funds to implement this act. This figure is included for informational purposes only.

If the bill is to be funded by a combination of state and federal funding, the following appropriation section should be included in the bill:

> **SECTION _. Appropriation.** (1) For the 2015-16 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 subject to the "(M)" notation as defined in the general appropriation act for the same fiscal year. To implement this act, the [department/other] may use this appropriation for _____.
>
> (2) For the 2015-16 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 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

Appropriations for functions of the executive branch of government are generally made 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 [insert division or other governmental 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 Special Cash Funds

If a bill requires an appropriation from the general fund to a special fund, the appropriation is actually made to the special fund and the first subsection of the appropriation section generally specifies the purposes for which the money appropriated is to be used. The money in the special fund is then appropriated to a particular department or office in the manner noted above. Example:

> **SECTION _. Appropriation.** (1) For the 2015-16 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.
>
> (2) For the 2015-16 state fiscal year, $____ is appropriated to the department of _____ for use by the [division or other departmental unit]. This appropriation is from reappropriated funds in the _____ fund pursuant to subsection (1) of this section. To implement this act, the [department/other] may use the appropriation as follows:
>
> (a) $____ for _____, which amount is based on an assumption that the [department/other] will require an additional ___ FTE;
>
> (b) $____ for _____; and
>
> (c) $____ for _____.

7.3.6.3 Appropriation for a Program

If the drafter wants to identify the particular program for which the department may spend the appropriated money, the program should be included in the third sentence as part of the purpose. Example:

> **SECTION _. Appropriation.** For the 2015-16 state fiscal year, $1,000,000 is appropriated to the department of labor and employment for use by the division of employment and training. This appropriation is from the general fund and is based on an assumption that the division will require an additional 1.7 FTE. To implement this act, the division may use this appropriation for workforce improvement grants as part of the employment and training program.

7.3.6.4 Appropriation to Capital Construction Fund

In recent years, the General Assembly has also appropriated general fund money to the capital construction fund. Example:

> **SECTION _. Appropriation.** For the 2015-16 state fiscal year, $1,250,000 is appropriated to the capital construction fund created in section 24-75-302, C.R.S. This appropriation is from the general fund. The department of personnel is responsible for the accounting related to this appropriation.

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 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 upon revenue collection, the cash fund spending authority cannot exceed the amount of revenue collected and equals 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.

A 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.

Appropriation clauses used to include the phrase "or so much thereof as may be necessary" to qualify the appropriation. In the 2015 session, the General Assembly enacted legislation that codifies that provision, along with other stock appropriation language, in the Colorado Revised Statutes. (See section 24-75-112.5, C.R.S.) This means the language will still apply to the clauses, even though it is not repeated in each clause.

7.3.8 Designating the Purpose of the Appropriation

The purpose of the appropriation can be very broad or quite specific, depending on the sponsor's intent. While somewhat rare, the purpose of the appropriation may be simply stated as "to implement this act". However, in most cases, the purpose will need to be more specific. This can be done 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".

Joint Budget Committee staff also commonly uses appropriation clauses that specify multiple purposes. Example:

> **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 22-24-106, C.R.S.

In this example, the appropriation was for use by a single division that was identified in the first sentence of the appropriation clause. If more than one division or other departmental unit is to receive the appropriation, then only the department should be referenced in the

first sentence, and the particular departmental units should be identified in the succeeding paragraphs. See the example E.1.2 in Appendix E of this manual.

The Joint Budget Committee staff will frequently match the language of the appropriation section to a line item in the long bill. The following example of a clause matches the appropriation to the department of natural resources on page 2551 of the 2014 Session Laws:

> **SECTION _. Appropriation.** For the 2014-15 state fiscal year, $467,606 is appropriated to the department of natural resources for use by the division of reclamation, mining, and safety. This appropriation is from the operational account of the severance tax trust fund created in section 39-29-109.3 (1)(c), C.R.S. To implement this act, the division may use this appropriation for program costs related to coal land reclamation.

Beginning in 2015, a new format may also be used to appropriate money for a purpose identified in the long bill.

> **Section _. Appropriation.** For the 2015-16 state fiscal year, $621,018 is appropriated to the department of corrections. This appropriation is from the general fund and is based on an assumption that the department will require an additional 1.5 FTE. To implement this act, the department may use this appropriation as follows:

Management, executive director's office subprogram	
Short-term disability	7,981
Amortization equalization disbursement	145,133
Supplemental amortization equalization disbursement	136,063
Leased space	220,550
Management, inspector general subprogram	
Operating expenses	1,961
Institutions, superintendents subprogram	
Start-up costs	109,330 (1.5 FTE)

This clause should be used only if it is difficult to match a line item in a paragraph format or if there are numerous line items for which an appropriation is made.

7.3.9 Drafting "No Appropriation" 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 sponsor of a bill 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 bill is to be implemented within existing FTEs, but inclusion of this clause will not actually limit the department's ability to use the appropriation to increase its number of FTEs. Example:

> **SECTION _. Appropriation.** (1) For the 2015-16 state fiscal year, $1,000,000 is appropriated to the department of education. This appropriation is from the lead school program grant fund created in section 22-36-107 (1), C.R.S. To implement this act, the department may use this appropriation to make grants to school districts for lead school programs.
>
> (2) It is the intent of the general assembly that this act can be implemented within existing FTE 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 it is anticipated that a bill will not require funding for implementation during the first fiscal year, but will require funding in subsequent fiscal years. In such situations, it is possible that one of the appropriations committees 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. Example:

> **SECTION __. Future appropriations.** Although no appropriation is included in this act for the 2015-16 state fiscal year, it appears that this act will require appropriations [from the general fund] [from cash funds] for subsequent fiscal years, and the amount required to be appropriated for the fiscal year beginning with the 2016-17 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 drafters in WordPerfect.

7.3.11 Double Appropriations

If there are two identical, duplicate bills that 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 sponsors of the conflict and work with the sponsors 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

7.4.1 General Provisions

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 an amount of money from one item of appropriation to another item of appropriation. If the general fund revenues are at or above the appropriations limit, transfers from the general fund to other funds would appear to be limited to those transfers that were allowed when section 20 of

article X of the state constitution was adopted. A transfer between two line item appropriations is essentially two appropriations: A negative supplemental appropriation to one line item (a reduction in the line item appropriation), combined with a matching positive supplemental appropriation to another line item (a positive supplemental appropriation to another line item equal to the reduction to the other line item).

7.4.2 Transfers Between Cash Funds

Transfers of money have been made from one cash fund to another cash fund. This generally occurs when a cash fund has a large balance or reserve. Measures were taken by the 1998 General Assembly to reduce cash fund balances so transfers between cash funds should not occur too often in the future. See section 24-75-402, C.R.S. This type of transfer only provides money for one year and is not an ongoing source of funding unless the transfers occur on a yearly basis. However, if a member requests that this type of transfer be made, there are two approaches that can be taken. The first approach, which is the preferred method and shown below, shows an amendment to the statutory section creating the cash fund to provide for the transfer followed by the appropriation of the transferred money. The second approach is 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. 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.

7.4.3 Transfer of Unexpended Appropriation to a Cash Fund

As stated previously in this Chapter, money appropriated from the general fund but not expended by a department will typically revert to the general fund at the end of the fiscal year unless otherwise provided by law. The General Assembly has on occasion provided for a portion of the reversion to be transferred to another fund. See Session Laws of Colorado 1998, chapter 306, section 120 and sections 24-37.5-112 (2) and 24-50-104 (1)(j), C.R.S. Because the amount reverted varies from year to year, this type of transfer does not guarantee the funding of a program. If a member requests that the reversion be used to fund a program, the drafter should make sure the member knows the risk involved. If the member proceeds with this as a funding source, the drafter will need to know whether the transfer is being done on a one-time basis or on a permanent basis and whether the amount to be transferred is the entire amount reverted or only a portion thereof. In providing for such a

transfer, the drafter may need to amend section 24-75-102, C.R.S., and add an appropriation clause if the money is to be expended.

Example of a one-time transfer:

> **SECTION __.** In Colorado Revised Statutes, 24-75-102, **add** (4) as follows:
>
> **24-75-102. Appropriations expended, when - balance - repeal.** (4) (a) THE STATE TREASURER SHALL TRANSFER TO THE SCHOOL CONSTRUCTION AND RENOVATION CASH FUND CREATED IN SECTION 22-43.7-103 ANY MONEY APPROPRIATED TO ALL DEPARTMENTS OF STATE GOVERNMENT FOR THE 2015-16 STATE FISCAL YEAR THAT WOULD OTHERWISE REVERT TO THE GENERAL FUND PURSUANT TO SUBSECTION (1) OF THIS SECTION; [EXCEPT THAT THE AMOUNT TRANSFERRED SHALL NOT EXCEED FIVE MILLION DOLLARS.]
>
> (b) THIS SUBSECTION (3) IS REPEALED, EFFECTIVE JANUARY 1, 2017.
>
> **SECTION _. Appropriation.** For the 2015-16 state fiscal year, $5,000,000 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.

Example of a permanent transfer:

> **SECTION __.** In Colorado Revised Statutes, 24-75-102, **amend** (1)(a); and **add** (1)(c) as follows:
>
> **24-75-102. Appropriations expended - when - balance.** (1) (a) Except as otherwise provided by law, including subsection (1)(b) of this section, all money appropriated by the general assembly may be expended or encumbered, if authorized by the controller, only in the fiscal year for which appropriated. Except as otherwise provided by law, INCLUDING SUBSECTION (1)(c) OF THIS SECTION, any moneys unexpended or not encumbered from the appropriation to each department for any fiscal year shall revert to the general fund or, if made from a special fund, to such special fund. Determination of such expenditures or encumbrances shall be made no later than thirty-five days after the close of the fiscal year and pursuant to the provisions of section 24-30-202 (11).
>
> (c) FOR THE 2015-16 STATE FISCAL YEAR AND EACH FISCAL YEAR THEREAFTER, THE STATE TREASURER SHALL TRANSFER ANNUALLY TO THE SCHOOL CONSTRUCTION AND RENOVATION CASH FUND CREATED IN SECTION 22-43.7-103 ANY MONEY THAT WOULD OTHERWISE REVERT TO THE GENERAL FUND PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION FROM ALL DEPARTMENTS OF STATE GOVERNMENT; [EXCEPT THAT THE AMOUNT TRANSFERRED SHALL NOT EXCEED TEN MILLION DOLLARS].
>
> **SECTION _. Appropriation.** For the 2015-16 state fiscal year, $10,000,000 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.

In either of the examples above, the reversion to the cash fund occurs at the end of the state fiscal year and the appropriation is made for the same year. The appropriation may not be useful for the department, unless there is a sufficient balance in the fund.

7.5 SPECIAL FUNDS - CASH FUNDING

7.5.1 General Provisions

By law, all revenues and money received by the state must be transmitted to the state treasurer and credited to the state's general fund unless otherwise required by the constitution or by statute to be credited and paid to a special fund. See sections 24-36-103 and 24-75-201, C.R.S. However, sometimes it is best to establish a special funding mechanism for a bill by which revenue needed to implement the bill is collected and credited to a special fund, rather than to the general fund. This usually occurs when a program is to be "cash-funded".

A cash-funded program supports itself through fees or charges. Usually, but not always, a special "cash fund" is created for purposes of separately accounting 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 fees collected are credited to a special fund, the division of registrations cash fund, and appropriations are made by the General Assembly every year from that cash fund to defray the costs of the state's licensing activities.

In 1998, the General Assembly addressed concerns that state cash fund reserves were too high by passing Senate Bill 98-194, the most significant portion of which is now codified as section 24-75-402, C.R.S. With certain specified exceptions and subject to other statutory and state constitutional provisions, section 24-75-402, C.R.S., limits the amount of uncommitted reserves that a cash fund 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 any entity that collects fees that are credited to a cash fund to adjust such fees as necessary to ensure that the amount of uncommitted reserves in the cash fund remains at or below the 16.5% limit.

It is important to note that section 24-75-402, C.R.S., does not apply to cash funds where the amount of the fee is set by the General Assembly in statute. For more information see the memo titled "Cash funds subject to the limit on uncommitted reserves established in section 24-75-402.", in Appendix J of this manual. Previous versions of the Colorado Legislative Drafting Manual suggested the drafter should include the following language in any bill that specifies in statute the amount of a fee that is to be credited to any cash fund that is not exempt from the requirements of section 24-75-402, C.R.S.:

> (__) 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).

Section 1-4-303, C.R.S., provides one example of a statutory provision that contains the preceding language. This and similar language was added to approximately 110 of these types of cash funds as a part of Senate Bill 98-194 in order to subject those particular cash funds to the requirements of section 24-75-402, C.R.S., and to give the entity a means to

comply other than seeking legislation to reduce the fee set in statute. Be aware then, that inclusion of the preceding language will subject a cash fund where the fee is set in statute by the General Assembly to the requirements of section 24-75-402, C.R.S.

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 but do not use "money" or "funds") 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".

The drafter should only name a fund a trust fund if the fund has elements of a true legal trust such as where the fund is established by the state as "trustor" or "settlor" and held by an independent "trustee" for the benefit of "beneficiaries". For example, see 24-32-717, C.R.S., (the "Colorado Housing Act of 1970").

A revolving fund is a fund that is replenished continuously or periodically, often from some source other than tax revenues. 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, for example, 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 (i.e., a fund used for accumulating the money necessary to pay principal and interest).

7.5.3 Drafting Considerations When Creating Special Funds

7.5.3.1 Required Elements

Every statute that creates a special 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 legislative 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 special fund. In other cases, a statute will give an agency authority to set the amount of such taxes, fees, or charges. 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:

> **40-16-XXX. Fees - taxicab fund.** The commission by rule shall establish fees for the direct and indirect costs of the administration of this article 16, which fees shall be assessed annually against any person licensed pursuant to the provisions of section 40-16-XXX. 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 16.

In some cases, a statute will require an agency to annually adjust its fees based on the amount of any appropriation made to the agency. See, for example, section 24-21-104, C.R.S., (the department of state cash fund) and section 24-34-105, C.R.S., (division of registrations cash fund).

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, the drafter may be asked 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. Appendix E of this manual contains examples of provisions for such startup financing. 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 establish their need.

7.5.3.4 Legislative Appropriation or Continuous Appropriation by Statute

Most special funds are subject to legislative appropriation, which means that an agency can only expend those money from the fund that the legislature appropriates to the agency. In contrast, an agency may expend money in a "continuously appropriated" fund without legislative appropriation. Examples of "continuous appropriation" language that the drafter can include in the body of a bill that creates a special fund are:

> The money in the fund is continuously appropriated to the commission for the purposes of this part 4.

> The money in the fund is continuously appropriated to the board for the sole purpose of assisting victims of crime; except that an amount equal to five percent of the total restitution made during the preceding fiscal year, not to exceed a total amount of fifteen thousand dollars for each fiscal year, may be used by the board to cover all direct and indirect costs

incurred by the board in implementing the provisions of this section.

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 special funds so that the funds will be subject to annual legislative appropriation. However, the appropriations committees do not necessarily intend that the General Assembly will use the appropriations process to tightly constrain expenditures from such funds. Instead, the primary purpose of subjecting special funds to legislative 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 fund the costs incurred by the collecting agency out of the money collected. In such 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 to be subject to legislative appropriation or continuously appropriated.

In drafting a bill that allows an agency to retain administrative collection costs, the drafter should avoid any possible confusion by the agencies that will implement the bill by including language stating that any money withheld for administrative expenses is to be credited to the general fund or to a special fund and that such money is subject to appropriation by the General Assembly for such 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 Cash Funding Without Creating a Separate Cash Fund

It is not always necessary to create a cash fund to accomplish cash funding.

Example:

> **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.

7.5.3.7 Direct and Indirect Costs

In recent years, the Joint Budget Committee, through the appropriations committees and the JBC staff, has encouraged the use of 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 such language, see the preceding examples in this section 7.5.3.) However, the drafter should remember that the wishes of the sponsor control the drafting of bills and amendments.

7.5.3.8 Crediting Investment Earnings to the Fund

The state treasurer generally invests money credited to a special 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 sponsor requests that interest be credited to the special fund.

> In accordance with section 24-36-114, the state treasurer shall credit all interest and income derived from the deposit and investment of this fund to the general fund.

The following language may be used to provide that interest is to be credited to the special 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 fund to the fund.

7.5.3.9 "Nonreversion" to General Fund

Language providing that money in a special fund shall not "revert" to the general fund appears in a number of statutes:

> The money in the fund shall not be transferred or credited to the general fund or to any other fund except as directed by the general assembly acting by bill.
>
> Any money not appropriated remains in the fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year.
>
> At the end of any fiscal year, all unexpended and unencumbered money in the fund remains therein and shall not be credited or transferred to the general fund or any other fund.

Generally the legal need for such "nonreversion" language is doubtful, but bill sponsors sometimes find such language psychologically reassuring. Providing that money in a special fund "shall not revert to the general fund at the end of a fiscal year" makes sense only if money actually originated in the general fund and there is a specific reason why the money might "revert".

Unnecessary use of "nonreversion" language can cause problems. For example, does the phrase "acting by bill" (in the first paragraph of the sample language above) allow removal of money from a special fund by a supplemental appropriation bill or must the General Assembly act by a "substantive law" bill that amends a statute?

7.5.3.10 "Reversion" to General Fund

Sometimes it may be desirable to transfer excess money remaining in a special fund at the end of a fiscal year to the general fund or another fund by inserting some of the following language:

> The state treasurer shall credit any unexpended and unencumbered money remaining in the fund to the general fund at the end of each fiscal year.
>
> The state treasurer shall credit the unexpended and unencumbered balance of money appropriated by the general assembly from the fund to the general fund at the end of each fiscal year.
>
> Net revenues collected in excess of twenty-five percent of the debt collection fund balance shall revert ["shall be credited" would be better] to the general fund at the end of each fiscal year. (See section 24-30-202.4 (3), C.R.S.)

7.5.3.11 Provision for Remaining Balance of Abolished Cash Fund

Any bill that abolishes a special fund should specify the disposition of any money remaining in the special fund at the time of abolishment. If not specified, the balance of the abolished fund will likely revert to the general fund pursuant to section 24-75-201, C.R.S. Money remaining in a special fund at the time of abolishment may be expressly transferred to the general fund or to an existing or newly-created special fund. Examples:

> The state treasurer shall transfer all unexpended and unencumbered money remaining in the fund as of July 1, 2000, to the general fund.
>
> The state treasurer shall credit the balance remaining in the fund after payment of all obligations of the preceding fiscal year to the general fund, and the fund is abolished.
>
> The state treasurer shall transfer all money remaining in the license fee fund as of July 1, 2000, to the division cash fund, which is hereby created.

7.5.3.12 Disbursement Procedure

Language like the following is sometimes used but is rarely necessary:

> **24-30-1515. Compromise or settlement of claims - authority.** (3) Disbursements from the risk management fund for claims compromised or settled in accordance with this part 15 shall be paid by the state treasurer upon warrants drawn in accordance with law upon vouchers issued by the division upon order of the board or person authorized in subsection (2) of this section to make such compromise or settlement.

7.5.4 Reappropriated Funds

During the fall of 2007, the Joint Budget Committee decided to change the format of appropriations commencing in fiscal year 2008-09 to eliminate the designation of "cash fund exempt" appropriations and create a new category for identifying money that is reappropriated more than once in the same fiscal year. The new category of appropriations is called "reappropriated funds", which is a specific sub-category of cash funds but is identified separately from a regular "cash funds" appropriation. This change affects not only the format of the long appropriations bill and supplemental appropriations bills, but also the format of appropriation clauses included in substantive law bills.

In the majority of cash fund appropriations made for FY 2008-09 and fiscal years thereafter, the appropriation clause will include a regular cash fund appropriation just as the Office and the Joint Budget Committee staff have always drafted them. Only in very limited circumstances will an appropriation clause be needed for "reappropriated funds".

A good test for whether the "reappropriated funds" term is to be used in an appropriation clause 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, like to the Office of Information Technology for computer services or to the department of law for legal services;
- Pass-through exchanges, like medicaid funds from the department of health care Policy and financing to the department of human services;
- Cash funds where statutes require an appropriation both into and out of the fund, like 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 appropriations clause for a substantive law bill, the drafter should look under the "State Appropriations" section of the fiscal note for the bill. The Legislative Council fiscal note staff 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.

Example of an appropriation with reappropriated funds for an appropriation to purchase services from another agency:

> **SECTION 5. 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 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of regulatory affairs.

So far, examples have been developed only for the first bulleted example of double counts

discussed in this section 7.5.4. - appropriations to purchase services from another agency. Those examples may be found in Appendix E of this manual. An example of an adjustment to the long bill appropriation is also in Appendix E.

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. 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 H.B. 10-1178, which imposed specific reporting requirements upon the state agencies that received the gift, grant, or donation and required tracking by the Office of Legislative Legal Services and Legislative Council. The reporting requirements were significantly amended and the tracking by legislative service agencies was repealed in 2013 by S.B. 13-268. Section 24-75-1303, C.R.S., now requires a state agency to report on the status of its funding to the Joint Budget Committee only when a gift, grant, or donation to the state agency is from a nongovernmental source and only when the bill creating the program relies entirely on money from the gift, grant, or donation as the funding source for the program.

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)]."

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REVENUE-RAISING BILLS

8.1 GENERAL LEGAL BACKGROUND

Section 31 of article V of the state constitution 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[14]. 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 which has been addressed in several Colorado cases and attorney general opinions. The first section of this Chapter discusses the construction case authority at the federal and state levels has placed upon the phrase "bills for raising revenue". Section 8.2 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".[15] 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.[16]

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 identical or substantially similar to the one contained in section 31 of article V of the state constitution[17]. Although this limitation survives as a historical reminder of Parliament's struggles with the crown, in

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[14] U.S. Const. art. I, § 7, cl. (1).

[15] N. Singer, *Sutherland Statutory Construction* [hereafter, "Sutherland"], § 9.06, 581 (5th ed. 1994).

[16] 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 at the time of the ratification of the federal constitution through 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).

[17] 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.

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 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 and their membership is usually subject to more frequent elections.[18]

8.1.2 Early Federal Interpretations of Revenue-raising Bills

Historically, the courts have accepted variations of three basic definitions of the constitutional phrase "bills for raising revenue".

The first of these definitions was borrowed from Justice Story by Justice Harlan in writing the majority opinion in *Twin City National Bank v. Nebeker,* 167 U.S. 196, 17 S. Ct. 766, 42 L. Ed. 134 (1897), and is probably the most frequently used definition in the reported cases. In *Twin City,* which involved a tax imposed by the federal government on circulating notes of national banks to fund a national currency secured by a pledge of bonds, 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. (167 U.S. 202-203)

A second definition was set forth in an early federal circuit court case, *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. (26 Fed. Cas. 1231)

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,* Fed. Case No. 15,464, 26 Fed. Cas. 577, 13 Blatchf 207 (Cir. Ct. S.D. N.Y. 1875):

> 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. (26 Fed. Cas. 578)

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[18] 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).

8.1.3 Colorado Case Interpretations

In assessing the constitutionality of bills under section 31 of article V of the state constitution, Colorado case authority has relied primarily upon the construction provided by Justice Harlan in the *Nebeker* case, although the other interpretations have influenced the courts' treatment of this issue as well.

Geer v. Board of Commissioners of Ouray County, 97 F. 435 (8th Cir. 1899), was the first case of importance dealing with the provisions of the state constitution concerning revenue-raising bills. In this case, a bill authorizing Colorado counties to refund certain of their debts through the issuance of 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 collection of taxes which it contained were mere incidents to the general refunding legislation which it carried. (97 F. at 440)

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*, 54 Colo. 256, 130 P. 330 (1913). 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 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. 54 Colo. at 259-60.

The next Colorado case dealing with revenue-raising bills was *Chicago, Burlington & Quincy Railroad Co. v. School District No. 1 in Yuma County*, 63 Colo. 159, 165 P. 260 (1917). This 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, saying 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:

> 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. 63 Colo. at 163.

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. Nor, said the court, did the act constitute the levying of taxes in the strict sense of the word, as the levy is not actually imposed, but is only authorized to be imposed.

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 provide the foundation for the consideration of revenue-raising measures under this constitutional provision. 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. More 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 revenue-raising bills are those which have as their main or primary objective raising money by taxation to support the general expenses and obligations of the government, and if the raising of revenue, even if it is through a tax and essential to the accomplishment of the bills's objective, is merely incidental to the primary purpose of the legislation, it is not a revenue bill.[19] Moreover, a majority of jurisdictions have also held that bills delegating taxing powers to municipalities are not revenue bills, because they do not, in themselves, raise revenue, but merely grant the power to do so.[20]

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*), 112 U.S. 580, 5 S. Ct. 247, 28 L. Ed. 798 (1884), 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 general terms, an exaction going to the general support of the government.[21] In this case, however, the exaction was

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[19] 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).

[20] Vermont Constitution, ch. II, § 6, annotations, ¶ 6, 257.

[21] 5 S.Ct at 252.

construed as a fee to create a fund to be raised from those profiting from immigration. In *Millard v. Roberts*, 202 U.S. 429, 26 S. Ct. 674, 50 L.Ed. 1090 (1906), 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.[22] More recently, the Supreme 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*, 495 U.S. 385, 398, 110 S. Ct.1964, 109 L. Ed. 2d 384 (1990). "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."[23]

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 revenues is, nonetheless, a bill for raising revenue. See the following opinions: Opinion No. 66-3941, dated February 3, 1966 [hereafter, 1966 Attorney General's opinion], and Memorandum, dated March 2, 1967. 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 of article V of the state constitution. 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."[24] This Attorney General opinion was affirmed by the Colorado

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[22] 26 S.Ct. at 675.

[23] 110 S.Ct. at 1973.

[24] The position that the origination clause applies in equal measure to bills that would *decrease* as well as increase tax revenues 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 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

Attorney General's Office in 1999. For more details, see the discussion under section 8.1.6.

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 of article V of the state constitution, applies only to pending bills, and not to revenue-raising bills passed at prior sessions. See the following opinions and memoranda: Memorandum, dated July 9, 1965, Opinion No. 66-3941, dated February 3, 1966, and Memorandum, dated March 2, 1967.

While there has been no formal opinion given on the following point, and presumably as an extension of the idea expressed in the previous paragraph, former Attorney General Dunbar additionally stated that a bill proposing an amendment to a "revenue-raising" statute that was originally enacted as a House bill must still be introduced in the House of Representatives, even in the absence of any effect upon revenues, so long as the measure relates to the levying and collection of taxes and the procedures therefor and not to the disposition of the revenues once collected. See undated memorandum relating to House Bills 1001 - 1005, inclusive, 1966 Regular Session.[25]

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 as the revenue derived therefrom would not be used to defray the general expenses of the state government.[26]

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 of article V of the state constitution:

- An act imposing a motor vehicle registration fee. In *Ard v. The People,* 66 Colo. 480, 182 P. 892 (1919), the court held that the purpose of registration fees is not the levying of taxes or the collection thereof as such fees are in the nature of a license or toll for using the public highways.

- An act setting up an elaborate code regulating the manufacture, sale, and use of malt, spirituous, and vinous liquors. *In the case of re Senate Interrogatories,* 94 Colo. 215, 29 P.2d 905 (1934), 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,* 99

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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.").

[25] For the reasons discussed below, at section 8.2.2, in connection with the discussion of GUIDELINE NO. 3, this conclusion seems a bit extreme.

[26] See Opinion No. 60-3363, dated January 1, 1960. See also Vermont Constitution, ch. II, § 6, annotations, ¶ 6, 257.

Colo. 153, 60 P.2d 913 (1936), 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,* 146 Colo. 464, 362 P.2d 155 (1961), 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 of Legislative Legal Services 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 recently 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, this approach was confirmed again by the Colorado Attorney General's Office. See memo dated November 12, 1999, from Doug Brown in Appendix J of this manual for the opinion and discussion of its impact to staff.

Applying the case authority handed down at the federal level, by other states, as well as Colorado, produces the following general principles for assessing whether a statutory measure "raises revenue" within the meaning of section 31 of article V of the state constitution and thus must be introduced in the House of Representatives:

- If a bill levies a tax upon the property in the state either generally or locally and the revenues produced are payable into the state treasury for uses of the state government, the bill is one for raising revenue.

- If a bill authorizes a local governmental unit to levy a tax, or the bill itself levies a tax upon local property for a local purpose, the bill is not one for raising revenue.

- If a bill appropriates money from the state treasury, the bill is not one for raising revenue.

- If a bill commits a certain amount annually from revenues 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 are used by the courts frequently 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 services provided by the government.

In concluding this section 8.1, reference should be made to the "Enrolled Bill Doctrine", a judicial doctrine which, with a certain amount of inconsistency, has been relied upon by the

United States Supreme Court, the lower federal courts, and the courts of Delaware, Pennsylvania, Georgia, and South Carolina. The effect of the doctrine is to bar any court inquiry into the legislative origins of a bill. The doctrine is, however, of no great importance in Colorado since the Colorado Supreme Court, by the fact that it has consistently inquired into the origins of revenue-raising bills, has implicitly rejected the doctrine.

An additional legal issue for attorneys working in this area to consider is the policy implications of the TABOR amendment[27] on the origination clause. In particular, subsection (4)(a) of section 20 of article X of the state constitution requires voter approval for any legislation that increases taxes. As noted above, while section 31 of article V of the state constitution was intended to provide accountability to the citizens for tax increases because members of the House of Representatives are subject to re-election every two years, this purpose appears to have been superseded by TABOR's voter approval requirement. Voters now directly make the decision as to whether taxes should be increased. In light of this additional constitutional restriction, the continued viability of the origination clause - at least in terms of a check on the state's power over the purse - must be questioned, and it is possible that a court resolving a case in which the origination clause is at issue may see matters the same way. It is also possible that future courts will continue to maintain some core essence of the clause, e.g., requiring a bill that would directly increase the state income tax rate to originate in the House of Representatives, while sustaining the Senate's ability to play a more active role through the amendment process in crafting legislation with an impact on state revenues even in the absence of parallel action by the House.

Note: Another source of information on this issue is the Research Memorandum dated December 1, 1969, titled "Revenue Raising Bills", prepared by the Legislative Drafting Office. For a more detailed and complete reference, consult the Research Memorandum.

8.2 GUIDELINES FOR DEALING WITH REVENUE-RAISING BILLS IN THE PRE-ENACTMENT AND POST-ENACTMENT CONTEXTS

The responsibilities of this Office in the implementation of section 31 of article V of the state constitution 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 the application of section 31 of article V of the state constitution 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 is to be contrasted with the post-enactment status of such bills discussed in section 8.2.2.

8.2.1 What is a Bill for Raising Revenue During the Legislative Process?

Section 31 of article V of the state constitution is, in effect, a constitutional rule of legislative

[27] Section 20 of article X of the Colorado Constitution.

procedure. It was intended to govern legislative behavior during the course of the legislative process[28]. The General Assembly has not adopted any 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. The principles set forth in the Research Memorandum have been interpreted and applied 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 of article V of the state constitution after enactment of the bill in question at which point the presumption of constitutionality attaches.[29] Courts often construe section 31 and other constitutional rules of legislative procedure (such as the "single subject" rule contained in section 21 of article V of the state 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 interpretation of constitutional rules of legislative procedure that are consistent with the restrictive purposes to be served by these rules. 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 such rules are applied before the enactment of a bill, i.e., during the legislative process.

The following guidelines are to be used in:

1. Determining if a bill is or may be a bill for raising revenue that should be introduced in the House; and

2. In giving advice as to whether amendments that affect revenues can be offered to such bills during the legislative process.

The guidelines attempt to apply section 31 of article V of the state constitution in the context of specific taxes and specific legislative scenarios. GUIDELINES NOS. 1 to 5 are to be used when a bill request is received and the primary question is whether the request involves a bill for raising revenue and whether the sponsor should be advised that the bill should be introduced in the House of Representatives. GUIDELINE NOS. 6 to 9 are applicable 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.

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[28] "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).

[29] 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).

GUIDELINE NO. 1. Any 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 would 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 provides for an "income tax checkoff" is not a bill that increases or decreases the income tax because such legislation merely designates the public purpose fund to which a taxpayer wishes to direct some of his or her refund. Such 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 that go to the state general fund and become available for general state purposes are: State cigarette tax, state tobacco tax, state controlled substances tax, state excise tax on beer, state excise tax on liquor, license fees for beer and liquor, parimutuel racing fees, limited gaming fees, and insurance premium tax.[30]

GUIDELINE NO. 2. Section 31 of article V of the state constitution has been interpreted to require introduction of a bill for raising revenue in the House even though the obvious effect of the bill is to *decrease* revenues.[31]

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[30] 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 (with the exception of limited gaming 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 of article V f the state constitution 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.

[31] 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

GUIDELINE NO. 3. Section 31 of article V of the state constitution may require the introduction of a bill for raising revenue in the House *even if it doesn't increase or decrease revenues*, so long as the bill amends an act which was originally revenue-raising and relates to the levying and collection of taxes, and the procedures therefor.[32]

CAVEAT: This interpretation seems a bit extreme. For example, while a bill that accelerates the date by which those collecting sales tax must remit 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 which limits amendments to procedural or administrative matters should not be considered a bill for raising revenue.

GENERAL EXCEPTION: If the bill does not increase or decrease revenues but merely provides for the disposition of revenues once collected, it is not a bill for raising revenue.[33]

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 diverts existing general fund revenues to a special purpose fund, it is not revenue-raising and may be introduced in the Senate. See Senate Bill No. 536, adopted in the 1979 session, which transferred a portion of sales and use tax revenues attributable to sales or use of vehicles or related items that had been credited to the general fund to the highway users tax fund[34]. The key distinction here appears to be that section 31 of article V of the state constitution does not apply because there is no increase or decrease in the affected tax.

GUIDELINE NO. 4. A bill imposing a tax or fee that is in the nature of a users' fee and that is earmarked for a state special purpose fund (not 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.

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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 5, above.

[32] 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 any 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 revenues. 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.

[33] 1966 Attorney General's Opinion.

[34] 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.

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 bill should start in the House because of the potentially erosive effect of such an exception on the general rule stated in section 31 of article V of the state constitution.[35]

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 usually 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.[36]

COMMENT: Since section 31 of article V of the state constitution 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. An interpretation of the origination clause that equates "origination" with "introduction" would hold the taxation power hostage to the requirement that a representative must introduce a bill for raising revenue before the House or Senate could even vote on the issue. It is not clear that such an interpretation would be consistent with the purpose of keeping the taxing power as close as possible to those subject to it because such an interpretation could contradict the fundamental concept of representative government.

GUIDELINE NO. 7. A House bill that, as passed to the Senate, 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 would result in origination of a revenue-raising bill in the Senate that violates the general rule.[37]

GUIDELINE NO. 8. A Senate bill that, as introduced, does not increase or decrease state

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[35] See, e.g., H.B. 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.

[36] Statements in GUIDELINE NOS. 6 to 9 regarding whether amendments are permissible are subject to the further qualification that such amendments come within the title of the bill to be amended as well as the requirements of section 17 (no change in original purpose of bill) and section 21 (bill must have single subject) of article V of the state constitution.

[37] Such an 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 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.").

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 would result in origination of a revenue-raising bill in the Senate in violation of the general rule.

GUIDELINE NO. 9. A Senate bill that, as introduced, increases or decreases state general fund taxes violates section 31 of article V of the state constitution 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 section 8.2.1, this Office may be asked to provide advice as to whether the bill or amendment would be upheld in court 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 particular 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 concerning the viability of section 31 of article V of the state constitution 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 the legislation 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."[38]

No cases have been found in which the Colorado Supreme Court has ruled a bill unconstitutional under section 31 of article V of the state constitution.[39]

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[38] Sutherland, 581, 582. See also U.S. Supreme Court cases discussed under section 8.1.4.

[39] 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?[40] (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?[41]

TEST NO. 3. Does the bill amend a bill that was originally an act for raising revenue?[42]

The following advice is offered on the basis of these tests:

ADVISORY NO. 1.0. 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 nongeneral fund tax "as an incident" to its principal purpose, is likely to be upheld by a court under section 31 of article V of the state constitution.

ADVISORY NO. 2.0. A Senate bill that has as its clear principal object an increase in income or sales and use tax, or both, should be held by a court to be in violation of section 31 of article V of the state constitution.

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 Senate bill that has as its principal object an increase in any of the other general fund taxes listed in GUIDELINE NO. 1 should be held by a court to be in violation of section 31 of article V of the state constitution. 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.[43]

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 the court felt that the new or existing state program was the principal object of the bill or because a court is likely to accord weight to the presumption of constitutionality in the face of a section 31 challenge. However, the revenue-raising aspect of the bill, i.e., the creation or increase of a general fund tax, is

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[40] *Geer v. Board of County Commissioners of Ouray County,* 79 F. 435 (8th cir.1899).

[41] *Colorado National Life Assurance Co. v. Clayton,* 54 Colo. 256, 130 P. 330 (1913).

[42] *Chicago, Burlington & Quincy Railroad Co. v. School District No. 1 in Yuma County,* 63 Colo. 159, 165 P. 260 (1917).

[43] See cases cited in note 9 above.

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. If a court did uphold such a Senate bill, it seems reasonable to ask whether any continuing purpose is served by section 31 of article V of the state constitution.

ADVISORY NO. 4.1. A Senate bill that contains several substantive programs and provides general fund increases to fund those programs appears to be subject to the analysis provided under ADVISORY NO. 4.0.

ADVISORY NO. 4.2. A Senate bill that provides a system of income tax credits or income tax credits or refunds to promote a predominant state interest such as economic development would probably be upheld if the state interest were strong enough.[44] Although apparently in violation of TEST NO. 3 above, the bill would not actually increase taxes and this factor could be enough to tip the balance in favor of the bill.

ADVISORY NO. 4.3. Senate bill that provides a redefinition of 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 of article V of the state constitution could fail on the theory that those subject to the taxing power had imposed the tax on themselves.

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[44] See the "Urban and Rural Enterprise Zone Act", article 30 of title 39, C.R.S.

ARTICLE X, SECTION 20
THE TAXPAYER'S BILL OF RIGHTS (TABOR)

9.1 INTRODUCTION

The passage of section 20 of article X of the Colorado constitution (also called "The Taxpayer's Bill of Rights," "TABOR," and "Amendment #1") at the 1992 general election required significant changes in the operations of state and local governments in Colorado. While accomplishing its principal purpose of protecting citizens from unwarranted tax increases,[45] this constitutional provision also affects a broad range of government operations, 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.[46]

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, drafters should 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".[47] This definition raises several interpretive issues. Some of these issues arise because TABOR does not define the terms "the state" and "local government". Others arise from the constitutional definition of the term "enterprise".

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[45] *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).

[46] Colo. Const. art. X, §20 (1).

[47] Colo. Const. art. X, §20 (2)(b).

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[48]. 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, C.R.S., which sets forth state fiscal policies relating to TABOR, 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[49]. This definition of "state" specifically excludes enterprises and special purpose authorities.

While the exclusion of enterprises from state government is constitutionally based, the question exists whether it is constitutionally permissible to exclude special purpose authorities from the definition of "the state". 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. Examples of 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.[50]

Before the adoption of TABOR, the General Assembly and the Colorado Supreme Court did not view special purpose authorities as part of state government.[51] 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*

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[48] *Havens v. Bd of County Commr's*, 924 P.2d 517, 520 (Colo. 1996).

[49] Section 24-77-102 (16)(a), C.R.S.

[50] See section 24-77-102 (15), C.R.S.

[51] See, for example, *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).

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 made in the *Senate Bill 93-74* 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". The uncertainty surrounding this issue is further evidenced by the fact that many special purpose authorities have taken action to be declared enterprises to ensure that these entities do not fall within the scope of TABOR.

9.2.1.2 Local Governments

In giving the term "local government" its commonly accepted meaning, as well as by applying dictionary, statutory, and case law definitions, there is a consensus that TABOR 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.

Whether special purpose authorities are local governments for purposes of TABOR is not known at this time. 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.

9.2.2 Enterprises

Since "enterprises" are specifically excluded from the definition of "district", qualified enterprises are not subject to the provisions of 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".[52] Whether something qualifies as an "enterprise" under TABOR is solely dependent upon whether the constitutional definition is satisfied.

Yearly fluctuations in grants to enterprises will be the most likely reason enterprises qualify

[52] Colo. Const. art. X, §20 (2)(d).

or disqualify from year to year. In designating enterprises or granting authority to designate enterprises, a drafter should exercise caution in making broad interpretations of the constitutional criteria without discussing the possible implications of such interpretations with the bill sponsor.

9.2.2.1 Government-owned Business

Uncertainty exists as to the meaning of the term "government-owned business", since TABOR does not define the term. In determining whether an entity is a government-owned business, 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.[53] 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 an TABOR enterprise. In *Regional Transportation District v. Romer, Denver District Court,* 93 CV 3069, the court refused to declare the Regional Transportation District an 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.[54]

The Colorado Supreme Court has held that the E-470 Highway Authority was not an enterprise for purposes of TABOR.[55] 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

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[53] *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859 (Colo. 1995).

[54] 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.

[55] *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859 (Colo. 1995).

the Arapahoe County District Court declared that the authority qualified as an enterprise.[56]

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[57]. 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.[58]

The third issue, involving who has the authority to issue revenue bonds, arises from the phrase "its own revenue bonds". 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 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.[59]

It is not known whether any of these approaches to granting revenue bonding authority would 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 determining whether an operation qualifies as an enterprise under TABOR relates to what may or may not be 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.

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[56] *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.

[57] Section 25-3-304 (4)(b), C.R.S.

[58] Section 24-35-221 (1)(a), C.R.S.

[59] 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.

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".[60] 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.[61] 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.

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".[62] 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".[63]

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. The spending limits imposed by TABOR are much broader in scope than any limits previously imposed on the state or on local governments since these 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

[60] Section 24-77-102 (7)(a), C.R.S.

[61] Section 24-77-102 (7)(b), C.R.S.

[62] Colo. Const. art. X, §20 (7)(a).

[63] Colo. Const. art. X, §20 (7)(b).

to allow the excess revenues to be retained by the government.[64]

9.3.1 Fiscal Year Spending

Although phrased in terms of "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").

The 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: 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.[65]

The statutory definition of "state fiscal year spending" 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 from "state fiscal year spending", 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, these classifications should be kept in mind while drafting as a possible manner by which expenditures relating to proposed legislation may not 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[66]. For a local government, the spending limit increases or decreases depending on the amount of change in inflation and in annual local growth[67]. Two definitions of "local growth" are set

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[64] Colo. Const. art. X, §20 (7)(d).

[65] Colo. Const. art. X, §20 (2)(e).

[66] Colo. Const. art. X, §20 (7)(a).

[67] Colo. Const. art. X, §20 (7)(b).

forth in article X, section 20 (2)(g) depending on whether a local government is a school district.

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.[68]

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 revenue changes approved by the voters are not included in the fiscal year spending base for purposes of applying the growth factors, voter-approved revenues are included in the allowable amount of fiscal year spending so that a government may always spend or save these revenues. There are two basic types of voter-approved revenues changes under TABOR: 1) Those involving 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) those not involving matters 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. Drafters should 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

One of the issues that has arisen with bills to provide tax relief (i.e., create or modify a tax exemption or credit or reduce a tax rate) is whether the bill creates a temporary TABOR refund mechanism that is triggered only when state revenues exceed the constitutional spending limit or whether the bill creates a permanent tax cut that is allowed regardless of 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

[68] See Colo. Const. art. X, §20 (7)(d).

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. Clarifying this point allows the fiscal note division and the economists in the Legislative Council to 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, language of legislative intent should be included in the bill that states "the general assembly finds and declares that the (tax credit, exemption, etc) is a reasonable method of refunding excess state revenues". This language helps avoid ambiguities regarding the effect of the bill.

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".[69] If a bill includes any of these actions involving taxes, voter approval is required before the action can take effect.

TABOR[70] 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, TABOR allows the voter approval requirement to be suspended and revenues may be raised without voter approval to cover the shortfall;[71] and 2) if the emergency tax requirements specified in TABOR are met[72]. 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.[73] Similarly, while a bill may not raise a tax rate that has been previously lowered by 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.

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[69] Colo. Const. art. X, §20 (4)(a).

[70] *Id.*

[71] Colo. Const. art. X, §20 (1).

[72] Colo. Const. art. X, §20 (6).

[73] See Colo. Const. art. X, §20 (1).

9.4.1.1 Taxes vs. Nontaxes

The voter approval requirement of TABOR applies only to matters directly relating to taxes. If a particular charge is not a tax, imposing it or increasing it is not subject to voter approval under TABOR. The term "tax" is not defined by this constitutional provision 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. It should be noted that 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, the following additional questions may be asked in order to reach a conclusion: 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?

This analysis for determining whether a charge is a tax has been set forth in a checklist which can be accessed in the research database.

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.[74] 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.[75] 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 has been 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.[76] More difficult questions involve actions such as changes in property tax 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.[77]

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[74] Colo. Const. art. X, §20 (8).

[75] *Bolt v. Arapahoe County School District #6, a/k/a/ Littleton Public Schools*, 898 P.2d 525 (Colo. 1995).

[76] 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 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".

[77] 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.

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[78]. See the discussion under section 9.5.2.

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".[79] Two exceptions to this voter approval requirement exist: 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 relating to the ballot title language that must be used for ballot questions for bonded debt increases.

9.4.2.2 Multiple-fiscal Year Financial Obligations Other than Debt

Before the approval of TABOR, judicial determinations and legislative actions held that certain types of instruments were not "debt". These exceptions 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 voter approval under TABOR, which requires prior voter approval for "any multiple-fiscal year . . . *financial obligation whatsoever*".[80] (Emphasis added.) This phrase raises the question whether every form of multi-year contract that involves the payment of money requires prior voter

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[78] Colo. Const. art. X, §20 (3)(c).

[79] Colo. Const. art. X, §20 (4)(b).

[80] Colo. Const. art. X, §20 (4)(b).

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. See sections 24-82-703, 24-82-705, and 24-82-801, C.R.S.

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.[81]

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 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")[82] 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.

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[81] *Submission of Interrogatories on House Bill 99-1325*, 979 P.2d 549 (Colo. 1999).

[82] 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.

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

While the phrase "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. Furthermore, TABOR states that "(v)oter-approved revenues changes do not require a tax rate change".[83] 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.

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".[84] Difficulties may occur in identifying other revenue, spending, and debt limits and also in determining whether a proposed action would "weaken" a limit. The issue is further complicated by the fact that TABOR also states that it supersedes "conflicting" provisions of state and local law.[85] 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 must be considered on a case-by-case basis.

In one of the few interpretations of this requirement, the Attorney General issued an opinion that the statutory 5.5% property tax revenue limitation (section 29-1-301, C.R.S.) is an "other limit" that cannot be ignored or repealed without voter approval.[86] 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.

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[83] Colo. Const. art. X, §20 (7)(d).

[84] Colo. Const. art. X, §20 (1).

[85] Colo. Const. art. X, §20 (1).

[86] See Attorney General Opinion No. 93-8, dated August 27, 1993.

To decide at what level voter approval is required, it is necessary to 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 of Legislative Legal Services 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.

These Office positions are set forth in memoranda found in the research database (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".[87] The phrase "ballot issue" is defined as "a non-recall petition or referred measure in an election".[88] These provisions raise the issue of whether the election provisions of TABOR apply only to taxing, 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

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[87] Colo. Const. art. X, §20 (3)(a).

[88] Colo. Const. art. X, §20 (2)(a).

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.[89] 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.[90]

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; 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.[91]

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, the referral language should 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, the referral section should 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

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[89] See sections 1-41-102 (4) and 1-41-103 (4), C.R.S.

[90] Section 1-41-102, C.R.S.

[91] Section 1-41-103, C.R.S.

the act will become part of the Colorado Revised Statutes.[92]

9.5.2 Required Ballot Language for Tax and Bonded Debt Increases

Drafters must use the precise language specified in article X, section 20 (3)(c) to begin ballot questions for tax increases and for bonded debt increases. The specific language for each question is 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), . . .?

Several observations can be made about this constitutional ballot language:

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.

2. Since article X, section 20 (3) specifies only the first few words of the ballot language for tax and bonded debt increases, discretion exists in completing the ballot language. For example, the ballot language for the reinstatement of the Colorado tourism promotion tax read 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,

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[92] See observation 9., below, for an example of having the secretary of state refer a TABOR question directly to the voters.

> 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, consult 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.

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).

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.

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,[93] 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 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

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[93] Colo. Const. art. X, §20 (7)(d).

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.

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.

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.

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. For an example of the ballot title being specified for a local government election, see section 32-13-105, C.R.S. 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.

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 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

Although the term "emergency" is defined by TABOR, it is defined in terms of what cannot

be an emergency, rather than what is an emergency. An "emergency" cannot be "economic conditions, revenue shortfalls, or district salary or fringe benefit increases".[94] 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.[95] The amount of money required to be reserved for emergencies 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.

9.6.3 Emergency Taxes

While TABOR authorizes governments to impose emergency taxes without prior voter approval, this authority is severely limited.[96] 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.

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[94] Colo. Const. art. X, §20 (2)(c).

[95] Colo. Const. art. X, §20 (5).

[96] Colo. Const. art. X, §20 (6).

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. 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.[97] The uniformity requirement seems to prevent the granting of such exemptions or credits on an individual business-by-business basis.

[97] 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.

9.7.1.4 Property Tax Assessment Procedures

Article X, section 20 (8)(c) contains several changes to the procedures governing the assessment of property for taxation purposes. Specifically, this provision: 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 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 of Legislative Legal Services has taken the position that income tax credits do not violate the flat rate requirement and are still allowed. See the memorandum on this issue in the TABOR memorandum directory.[98]

[98] Among the income tax credits that have been established since TABOR's enactment are: Section 39-22-119, C.R.S., (child care expenses); section 39-22-122, C.R.S., (purchase of long-term care insurance); section 39-22-520, C.R.S., (investment in school-to-career programs); and section 39-22-522, C.R.S., (donation of conservation easement).

RESOLUTIONS AND MEMORIALS

10.1 APPLICABLE LEGISLATIVE RULES

The drafting of resolutions and memorials is quite different from the drafting of bills except for the drafting of those 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 provides 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. * * *
* * *

House Rule No. 26 is similar to the above-quoted Senate Rule as to the classification of resolutions and memorials except that memorials introduced in the House may deal only with the expression of sentiment on the death of persons and only for persons who served as members of the General Assembly. The House Rule differs somewhat from the Senate Rule in wording and the handling of certain resolutions upon introduction.

10.2 CONCURRENT RESOLUTIONS

Under Senate Rule No. 30 and House Rule No. 26, the submission of proposed amendments to the state constitution and the question of holding a state constitutional convention, which must be submitted to the people by the General Assembly, take the form of concurrent resolutions. The drafter should first become familiar with the form of a concurrent resolution for either of these purposes. (See the examples in Appendix A of this manual.)

Article XIX of the state constitution sets forth the method by which both proposed amendments to the state constitution and the question of holding of a state constitutional convention are submitted to the people by the General Assembly.

As previously discussed in Chapter 5 of this manual titled "Special Rules and Techniques of Drafting", the provisions of Joint Rule No. 21 of the Senate and House of Representatives apply to concurrent resolutions proposing constitutional amendments. Accordingly, new material should be capitalized, and material to be omitted should be shown in crossed-out letter type.

In 1994, voters adopted a single-subject rule for titles of constitutional amendments. The single-subject requirement is contained in section 2 of article XIX of the state constitution. The same rules on single subject for drafting bill titles apply to drafting titles to constitutional amendments.

Section 2 of article XIX further provides in part: "But the general assembly shall have no power to propose amendments to more than six articles of this constitution at the same session." 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 (*In re Senate Concurrent Resolution No. 10*, 137 Colo. 491, 328 P.2d 103 (1958)).

The General Assembly also ratifies amendments to the United States constitution by concurrent resolution. The form for such a resolution may be found in Appendix A of this manual.

10.2.1 Guidelines for Drafting Concurrent Resolutions

1. Most concurrent resolutions have three sections, although there are a few exceptions -- concurrent resolutions dealing with amendments to the U.S. Constitution or state constitutional conventions and those that are contingent on the passage of another concurrent resolution. 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 . . .". The amended or added constitutional language follows.
>
> **SECTION 2.** Contains the ballot title. The concurrent resolution title 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 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 the electors voting on the ballot title vote "Yes/For", then the amendment will become part of the state constitution."

2. The concurrent resolution title and ballot title should meet single-subject requirements and should accurately reflect the text of the proposed amendment.

3. The concurrent resolution title and ballot title should not include references to the constitutional provisions being amended in the concurrent resolution. The title should state: "**SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF COLORADO AN AMENDMENT TO THE COLORADO CONSTITUTION CONCERNING…**".

4. Proposed constitutional amendments are submitted to the "registered electors". Do not use "qualified electors" in the title of a concurrent resolution.

5. The format of the concurrent resolution title and the ballot title differs slightly. The concurrent resolution title is like a bill title in that it appears in small capital letters and bold type. The ballot title should be in regular type; except that certain ballot titles must meet the requirements of section 20 (3)(c) of article X 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 item 6. of these guidelines.

6. Certain ballot titles must meet the requirements specified in section 20 (3)(c) of article X of the state constitution. These 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 is the case with other types of concurrent resolutions. (For further explanation of TABOR questions, see Chapter 9 of this manual.) Also, under the secretary of state's rule 4.8.1, the ballot title will be printed in all capital letters.

7. Like bills, concurrent resolutions contain a resolution summary.

8. A separate amending clause, similar to an amending clause for the C.R.S., is required for each section of an article in the constitution. See Appendix B of this manual for examples of how an amending clause should look.

9. Amending clauses are not numbered like bill sections.

10. Consult Chapter 6 of the Legislative Editor Manual for additional guidelines concerning technical aspects of concurrent resolutions.

NOTE: Be careful when changing a concurrent resolution to a regular bill. Make certain that you replace sections 2 and 3 of the concurrent resolution with appropriate sections for a bill, such as an effective date and a safety clause.

10.3 JOINT AND SIMPLE RESOLUTIONS

Joint resolutions may pertain to the business transactions of the two houses, such as the joint resolution adopted at the beginning of each session to notify the Governor that the houses are ready to conduct business and the joint resolution adopted at the end of each session to adjourn the General Assembly *sine die* (that is, adjourn without appointing a day on which to appear or assemble again - technically pronounced "see′-nay dee′-ay", however, commonly pronounced "sigh′-nee die").

Joint resolutions may express the will of both houses on any matter other than matters that are the subject of tributes. (See Senate Rule No. 30A and House Rule No. 26A for the subject matter of tributes.)

Simple resolutions, such as a House resolution or a Senate resolution, can pertain to any of the above purposes, but they do not require the concurrence of both houses, and they must relate solely to the house in which they have been introduced. A simple resolution is often used by the house holding a bill to submit interrogatories to the Colorado Supreme Court, pursuant to section 3 of article VI of the state constitution, for an opinion on the bill's constitutionality. Joint resolutions may also be used for this purpose.

The parts of joint and simple resolutions are: The preamble (in the form of "whereas clauses"); the resolving clause; and the body of the resolution, which expresses the purpose of the resolution. Under certain circumstances, the preamble (or "whereas clauses") may be omitted.

In preparing joint resolutions, particularly those that express the will and sentiment of the General Assembly, the drafter should attempt to obtain from the sponsor, preferably in writing, definite ideas to be used in the "whereas clauses" in order for the sentiments of the sponsor to be expressed in the manner desired. For instructions on amending resolutions and memorials, see Appendix C of this manual.

The typical joint resolution described in the preceding paragraph does not have the effect of law, and the General Assembly cannot do by resolution that which can only be done by law. For instance, if money is to be made available for any committee created by joint resolution, it must be authorized and allocated from an appropriation already made by bill since appropriations cannot be made by resolution. Section 33 of article V of the state constitution provides that "No money shall be paid out of the treasury except upon appropriations made by law...." One good description of joint resolutions is that they are like "letters to Santa" -- they are hoped for sentiments that often do not come true.

Some joint resolutions are required by statute to go to the Governor for his 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) to be approved by a joint resolution signed by the Governor.

Examples of joint and simple resolutions are found in Appendix A of this manual.

10.3.1 Process for Creating an Interim Study Committee

Commencing with the 2014 legislative session and pursuant to section 2-3-303.3, C.R.S., and Joint Rule 24, a legislator may no longer request a bill or resolution to create an interim committee. Instead, a legislator may submit a written request in the form of a letter to the legislative council regarding the issue that he or she wishes to study during the interim. The letter must be submitted no later than the ninety-fourth day of a regular session. Section 2-3-303.3, C.R.S., specifies the items that must be identified in the request. The legislative council will prioritize the requests and determine what topics will be studied by interim committees.

10.4 JOINT AND SIMPLE MEMORIALS

Memorials may be used for two purposes: (1) To memorialize the Congress of the United States on any matter (Senate memorials only), or (2) as an expression of sentiment on the death of a former member of the General Assembly. To memorialize any federal agency other than the Congress or to express opinions to Congress which are to be introduced in the House, the drafter should prepare either a joint or simple resolution.

Many memorials are requested to express sentiment for the death of current or former members of the General Assembly. If a deceased former member served in both houses of the General Assembly or if a deceased member served as a member of the current General Assembly, the drafter should prepare a joint memorial. If a deceased former member served in only one house, the drafter should prepare a simple memorial for the house in which the member served.

Memorials are similar in form to joint and simple resolutions in that they contain a preamble consisting of "whereas clauses", a resolving clause, and a body expressing its purpose. In drafting memorials, especially those memorializing the Congress of the United States, the drafter should attempt to obtain from the sponsor, preferably in writing, definite ideas to be used in the "whereas clauses" in order for the sentiments of the sponsor to be expressed as desired.

Examples of joint and simple memorials are found in the back of any recent volume of the Session Laws and in Appendix A of this manual.

10.5 TRIBUTES

Tributes are meant for congratulatory purposes. Since they do not need to be adopted by the House or the Senate, no floor time is necessary to handle tributes. Because of this, the leadership has encouraged members to use tributes to congratulate sports teams or to honor exceptional people or groups rather than joint resolutions or memorials.

Drafters in the Office of Legislative Legal Services do not presently draft tributes. If any Senator requests a "Tribute", refer him or her to the Secretary of the Senate; if any Representative requests a "Tribute", refer him or her to the Chief Clerk of the House of Representatives. The Secretary of the Senate and the Chief Clerk of the House have the proper "Tribute" forms to be filled out.

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.

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 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. To be placed on the ballot, a petition for the initiative 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. An initiative may amend either the constitution or the statutes. 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 General Assembly for review and comment. The Legislative Council accepts these on behalf of both offices. Unless withdrawn, 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. This meeting is open to the public and is called a review and comment meeting. Proponents may make changes to their measure in response to the comments. Sometimes they choose to refile the amended measure and have another review and comment meeting.

After the review and comment stage, the proponents must file the text of the initiative with the secretary of state. It is then scheduled for a hearing with the title board for the purpose of fixing a title for the ballot. 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 the 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 1-40-105, 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 can be found at http://leg.colorado.gov/content/initiative-rules. In addition, there is extensive Colorado case law on the initiative process. A summary of relevant cases is included in Appendix G of this manual.

The statute 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 meanings which are understandable to the average reader." The statute indicates that "where appropriate the staff comments shall also 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 our suggestions. The constitution states that "neither 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".

The rules allow 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 as of March 26, 2016, 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.

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 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 seventy-two hours after the amended petition is filed.

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 the setting of a title by the title board. 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 title" for each proposed law or constitutional amendment. The Office of Legislative Legal Services staff member prepares a draft title and submission clause for the title board to consider.

The title board will then conduct a public hearing to set or fix the title. The title board initially determines whether or not the measure has a single subject. If the board determines that there is a single subject, it will fix a title for the measure. If the board determines there is not a single subject, it will not fix a title. The board also has to consider whether the proposed ballot title and question would cause public confusion about whether the voter is voting for or against the measure. The ballot question 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. Both staff members are jointly responsible for seeing that the review and comment memo is prepared. The OLLS 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 OLLS 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. The OLLS staff member should pick the appropriate language and delete any of the unused language. Also, 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 fashion 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 our 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 our 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 OLLS 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 (though this latter type of question can be useful for clearly establishing a proponent's intent.) Also, 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?"; or
- "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 (the

TABOR amendment). 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 the TABOR amendment or whether the proponents intend for the measure to be subject to or exempt from TABOR limitations on spending or 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 capital letters and strike type 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 OLLS 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.

The OLLSnet page at "Initiatives - Standard Language for Review and Comment Memos" 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 -- for example, 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 and placed on joint Legislative Council/Office of Legislative Legal Services staff letterhead. The Legislative Council staff is responsible for distributing the memo to the proponents. A review and comment memo must be transmitted to the proponents as soon as possible but no later than forty-eight hours prior to 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 forty-eight hour deadline.

See Appendix G of this manual for the top twelve things to avoid in initiative review and comment memos and an example of an initiative and a review and comment memo.

11.2.2 Conducting a Review and Comment Meeting

The two staff persons from the two offices who are 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 tape 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. For initiatives filed prior to March 26, 2016, proponents of an amended petition may participate in the review and comment meeting via telephone conference call using a speaker phone under Legislative Council's rules.

For initiatives filed on or after March 26, 2016, 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 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 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 numbered purposes can be read. The proponent should be given an opportunity to comment as to whether this is a fair statement of the purpose or the intent of the measure.

After the purposes have been discussed, the staff goes through the numbered questions and comments one by one, reading each into the record and allowing 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 person 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 be streamlined focusing on identifying 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 giving 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 person needs to be careful to not make positive or negative comments about the measure or appear to have an opinion about the merits or deficiencies of the proposal or to influence 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 such 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. The memo should indicate the earlier versions by number and date of previous meetings. It should 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. It should also 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 office of the secretary of state, 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 is responsible for drafting a title for the measure and a ballot question that mirrors the title. Article XIX, section 2 (3) 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, in setting titles, the title board 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 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 which 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 title 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.

The following things should be considered in drafting a title for an initiative for the title board:

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 it use catch phrases, advertisements, or slogans for the measure?

The submission clause 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 at the end. 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) 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 title board will add the amount to the final ballot title, usually based on estimates voluntarily submitted by legislative council staff.

See Appendix G of this manual for an example of a draft title and ballot question prepared for the title board. See Appendix G of this manual for a prioritized checklist for drafting titles and ballot title and submission clauses for proposed initiatives. The secretary of state's office requests that the staff draft be sent in electronic form by noon on the Friday prior to the title board meeting at which a measure will be considered. The office of the secretary of state will then prepare a new document with line numbers for the title board meeting.

11.2.4 Title Board Meetings

The title 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 title 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. The Office of Legislative Legal Services staff member may attend a title board meeting but is not required to do so.

11.2.5 Initial Fiscal Impact Statements and Abstracts

For each initiative that is submitted for review and comment on and after March 26, 2016, and submitted to the title 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 title board meeting, but it is not part of the proceedings. The OLLS 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.

11.2.6 Motions for Rehearing

Any proponent or any registered elector who is not satisfied with a decision of the title board regarding the single subject or who is not satisfied with the title and submission clause set by the title board and who claims that they 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 decision is made or the title and submission clause are set. The motion for rehearing will be heard at the next scheduled meeting of the title board or, if the title was set at the last meeting in April, within forty-eight hours, after expiration of the 7-day period for filing the motion.

If the motion for rehearing is denied by the title board or if someone 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 title 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.

If a motion for rehearing is filed, the Office of Legislative Legal Services staff member may be asked to review the merits of the motion for rehearing and advise the Office member sitting on the title board. No formal document is required for this purpose. The Office staff member may consider attending the rehearing before the title board.

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.

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GUIDELINES FOR DRAFTING UNIFORM ACTS

12.1 BACKGROUND

The Uniform Law Commission (ULC) (formerly known as the National Conference of Commissioners on Uniform State Laws) is a nonprofit, unincorporated association, comprised of members from each state, that encourages the uniformity of state laws.

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 (CCUSL), which sends its members to the national conference, see section 2-3-601 et seq., C.R.S.)

The ULC 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 or the publications coordinator.

12.2 LANGUAGE IN UNIFORM ACTS

12.2.1 Final Versions of the Uniform Acts

Because changes are made over time to the uniform acts by the ULC as the acts go through their drafting process, a drafter should ensure that he or she has the final version of the uniform act.

12.2.2 Language in the Uniform Act Should Generally Not be Changed

- Keep changes to a minimum.
- **Do not** make preference 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 you feel 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"), a wrong internal reference, or incorrect dates or dates that need to change due to timing issues. You may want to contact the ULC to confirm your hunch.
- If substantial Colorado-specific changes are made, during publications add an editor's note summarizing the change. For an example, see the editor's note for §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.

For subsections, paragraphs, subparagraphs, and sub-subparagraphs, it is generally alright to change the ULC's numbering and lettering system to conform to the C.R.S. numbering and lettering system.

However, there may be instances when it is **not** appropriate to change the numbering and lettering for subsections, paragraphs, subparagraphs, and sub-subparagraphs to conform to the C.R.S. system. If there is a need to assure that language and numbering of the uniform act will be substantially the same from state to state in order to avoid confusion between the states, the numbering and lettering should not be changed to conform to C.R.S. format. For example, in the "Uniform Commercial Code", title 4, C.R.S., the numbering and lettering was kept the same as the ULC's system because the "Uniform Commercial Code" has been adopted in almost every state and all states would expect to find the numbering and lettering to be the same for the people who use the code.

If there is doubt about whether to conform uniform acts to the C.R.S. system, the drafter should consult with members serving on the Colorado Commission on Uniform State Laws for their input.

12.3.2 Punctuation

Generally, you should change the ULC'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, you 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;
- Add commas around prepositional phrases.

However, be very conservative when making changes to punctuation within the language of the uniform act because the ULC may have intended the uniform act to be drafted in a certain way. Changing such 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 done 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. For example, assuming the numbering system was changed to C.R.S. numbering and lettering:

- "this part 2" or "this article 2", instead of "this uniform act" or "this act"
- "section 23-16-206 (2)", instead of "section 106 (b)"
- "section 15-5-813 (3)(b) and (3)(c)", instead of "section 113 (c)(2) or (3)"
- "subsection (1)(g) of this section", instead of "paragraph (7)"
- "subsection (2) of this section", instead of "subsection (b)"
- "subsections (3) to (9)" instead of "subsections (c) through (i)"
- "Uniform Athlete Agents Act", instead of Uniform Athlete Agents Act
- "section 102 of the "Electronic Signatures in Global and National Commerce Act", Pub.L. 106-229, 114 Stat. 464 (2000), as amended," or ""Electronic Signatures in Global and National Commerce Act"", 15 U.S.C. sec. 7001 et seq., as amended," 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.

12.3.9 Gender-neutral Language

Change language in the uniform act to make it gender-neutral.

12.3.10 Which v. That

Change "which" to "that", where appropriate.

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 CCUSL:

- 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 bolded at the top of the sponsorship box.
- One or more legislators, whether or not a member of the CCUSL, will be assigned as sponsors of the uniform act bills. When sponsorship of the uniform act 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 CCUSL:

- Add to the beginning of the summary "**Colorado Commission on Uniform State Laws.**"
- In the first paragraph of the summary, add language that the ULC 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 [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.

The drafter should ascertain whether the sponsor objects to the publication of official comments.

- If the sponsor does object, the comments should not be published and there is no need to include anything in the bill that addresses the official comments.
- *If the sponsor does not object* to publication of the official comments, then it is the Office's practice to publish ULC official comments in the C.R.S. To make this happen, the bill must include a section that specifically gives the Revisor of Statutes permission to publish the comments. This may be accomplished within the bill in one of two ways:
    1. Add a nonstatutory section to the bill
    2. Add a new subsection to section 2-5-102, C.R.S.

12.5.2 Two Methods for Giving Permission to the Revisor of Statutes to Publish the Official Comments

12.5.2.1 Add a nonstatutory section to the bill

The drafter can add a nonstatutory section to the uniform act bill, directing the revisor of statutes to publish the official comments in the statute books. For example (drafter should change the highlighted language, as appropriate):

> **SECTION __. Inclusion of official comments.** The revisor shall include in the publication of the "Uniform Child Abduction Prevention Act", as nonstatutory matter, following each section of the article, the full text of the official comments to that section contained in the official volume containing the 2006 official text of the "Uniform Child Abduction Prevention Act" issued by the Uniform Law Commission, with any changes in the official comments or Colorado comments to correspond to Colorado changes in the uniform act. The revisor of statutes shall prepare the comments for approval by the committee on legal services for publication.

12.5.2.2 Add a new subsection to section 2-5-102, C.R.S.

If the drafter is aware of a desire that there be a stronger, more formal assurance that the official comments be included in the statute books, the drafter can add a new subsection to section 2-5-102, C.R.S., directing the revisor of statutes to publish the official comments. For example:

> **2-5-102. Inclusions - nonstatutory.** (10) THE REVISOR SHALL INCLUDE IN THE PUBLICATION . . . . (the language is the same as in example 1. above)

It is not necessary to include the above sections, either statutory or nonstatutory, if a uniform act is just being amended and the C.R.S. already includes the official comments. The revisor of statutes already has the authority to update the official comments as necessary.

12.5.3 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, a drafter should ensure that he or she has the final version of the official comments for publishing.

12.5.4. Notify Publications Coordinator

Notify the publications coordinator immediately when official comments will need to be added to the statute books. The coordinator will need time to format and code the comments.

12.6 CONTACT INFORMATION FOR THE UNIFORM LAW COMMISSION

The office of the ULC is located in Chicago, Illinois.

Phone: 312-450-6600 or 312-915-0195

Website: http://www.uniformlaws.org

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APPENDIX A
EXAMPLES OF BILLS, RESOLUTIONS, AND MEMORIALS

Notice about the Format of the Examples Located in this Appendix:

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 the examples contained in this appendix are based on actual legislation introduced in the Colorado General Assembly, but they are not exact replicas of previous legislation. Certain elements of these sample bills 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.

Bill Amending Existing Law

A BILL FOR AN ACT

101 **CONCERNING THE LOW-INCOME TELEPHONE ASSISTANCE PROGRAM.**

Bill Summary

Legislative Audit Committee. 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.

---

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

2 **SECTION 1.** In Colorado Revised Statutes, 40-3.4-105,

3 **amend** (1); and **repeal** (3) as follows:

4 **40-3.4-105. Low-income telephone assistance - eligibility.**

5 (1) ~~Individuals~~ AN INDIVIDUAL IS eligible for low-income telephone

6 assistance ~~shall be those persons who~~ IF THE PERSON:

7 (a) ~~Are~~ IS certified by the department of human services ~~as~~

8 ~~qualified~~ to receive financial assistance payments UNDER AT LEAST ONE

9 OF THE FOLLOWING PROGRAMS:

10 (I) AN OLD AGE PENSION AS SET FORTH IN SECTION 26-2-111 (2);

1 (II) AID TO THE NEEDY DISABLED AS SET FORTH IN SECTION
2 26-2-111 (4);
3 (III) AID TO THE BLIND AS SET FORTH IN SECTION 26-2-111 (5);
4 (IV) SUPPLEMENTAL SECURITY INCOME BENEFITS UNDER THE
5 FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, 42 U.S.C. SEC. 1601
6 ET SEQ.;
7 (V) COLORADO WORKS ASSISTANCE AS SET FORTH IN SECTION
8 26-2-706; OR
9 (VI) LOW-INCOME HOME ENERGY ASSISTANCE BENEFITS UNDER
10 THE FEDERAL "ENERGY POLICY ACT OF 2005", AS AMENDED, 42 U.S.C.
11 SEC. 8621 ET SEQ.
12 (b) ~~Are~~ IS A current or prospective ~~subscribers~~ SUBSCRIBER to
13 basic local exchange service, as defined in section 40-15-102; AND
14 (c) ~~Are citizens~~ IS A CITIZEN or legal ~~residents~~ RESIDENT of the
15 United States and ~~residents~~ A RESIDENT of Colorado. ~~and~~
16 (d) ~~Have a monthly household gross income at or below one~~
17 ~~hundred eighty-five percent of the federal poverty line.~~
18 (3) ~~In providing low-income telephone assistance, the~~
19 ~~department of human services shall give priority to households where~~
20 ~~one or more persons are recipients of:~~
21 ~~(a) An old age pension as set forth in section 26-2-111 (2),~~
22 ~~C.R.S.;~~
23 ~~(b) Aid to the needy disabled as set forth in section 26-2-111~~
24 ~~(4), C.R.S.;~~
25 ~~(c) Aid to the blind as set forth in section 26-2-111 (5), C.R.S.;~~
26 ~~(d) Supplemental social security disability benefits under 42~~
27 ~~U.S.C. sec. 1396 et seq.; or~~
28 ~~(e) Colorado works assistance as set forth in sections 26-2-706~~

1 ~~and 26-2-707, C.R.S.~~

2 **SECTION 2. Act subject to petition - effective date.** This act
3 takes effect at 12:01 a.m. on the day following the expiration of the
4 ninety-day period after final adjournment of the general assembly
5 (August 7, 2012, if adjournment sine die is on May 9, 2012); except
6 that, if a referendum petition is filed pursuant to section 1 (3) of article
7 V of the state constitution against this act or an item, section, or part of
8 this act within such period, then the act, item, section, or part will not
9 take effect unless approved by the people at the general election to be
10 held in November 2012 and, in such case, will take effect on the date
11 of the official declaration of the vote thereon by the governor.

Bill Adding New Material

A BILL FOR AN ACT

101 **CONCERNING AN INFORMATIVE STATEMENT TO BE INCLUDED IN THE**
102 **BALLOT INFORMATION BOOKLET PRECEDING EACH MEASURE**
103 **THAT IS TO APPEAR ON THE BALLOT.**

Bill Summary

The bill requires the ballot information booklet (blue book) or other publication of initiated and referred measures to contain a statement before each measure informing the voter that the title was drafted by professional staff and is a summary for ballot purposes only. The statement also informs voters that the text of a referred measure was thoroughly debated by the general assembly and that the text of an initiated measure was drafted by the initiative proponents. Finally, the statement for referred measures informs voters that the measure is included on the ballot because it has passed a majority vote of the state senate and the state house of representatives, while the statement for initiated measures states that the measure is included on the ballot because the proponents have gathered the required amount of petition signatures.

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1 *Be it enacted by the General Assembly of the State of Colorado:*
2 **SECTION 1.** In Colorado Revised Statutes, **add** 1-40-126.5 as
3 follows:
4 **1-40-126.5. Explanation of ballot titles and actual text of**
5 **measures in notices provided by mailing or publication.** (1) IN ANY
6 NOTICE TO ELECTORS PROVIDED BY THE DIRECTOR OF RESEARCH OF THE
7 LEGISLATIVE COUNCIL, WHETHER IN THE BALLOT INFORMATION
8 BOOKLET PREPARED PURSUANT TO SECTION 1-40-124.5 OR BY
9 PUBLICATION PURSUANT TO SECTION 1-40-124, THERE SHALL BE
10 INCLUDED THE FOLLOWING EXPLANATION PRECEDING THE TITLE OF

1 EACH MEASURE:

2 (a) FOR REFERRED MEASURES: "THE BALLOT TITLE BELOW IS A
3 SUMMARY DRAFTED BY THE PROFESSIONAL LEGAL STAFF FOR THE
4 GENERAL ASSEMBLY FOR BALLOT PURPOSES ONLY. THE BALLOT TITLE
5 WILL NOT APPEAR IN THE (COLORADO CONSTITUTION/COLORADO
6 REVISED STATUTES). THE TEXT OF THE MEASURE THAT WILL APPEAR IN
7 THE (COLORADO CONSTITUTION/COLORADO REVISED STATUTES)
8 BELOW WAS THOROUGHLY DEBATED BY THE GENERAL ASSEMBLY AND
9 IS REFERRED TO THE VOTERS BECAUSE IT PASSED BY A (TWO-THIRDS
10 MAJORITY/MAJORITY) VOTE OF THE STATE SENATE AND THE STATE
11 HOUSE OF REPRESENTATIVES."

12 (b) FOR INITIATED MEASURES: "THE BALLOT TITLE BELOW IS A
13 SUMMARY DRAFTED BY THE PROFESSIONAL STAFF OF THE OFFICES OF
14 THE SECRETARY OF STATE, THE ATTORNEY GENERAL, AND THE LEGAL
15 STAFF FOR THE GENERAL ASSEMBLY FOR BALLOT PURPOSES ONLY. THE
16 BALLOT TITLE WILL NOT APPEAR IN THE (COLORADO
17 CONSTITUTION/COLORADO REVISED STATUTES). THE TEXT OF THE
18 MEASURE THAT WILL APPEAR IN THE (COLORADO
19 CONSTITUTION/COLORADO REVISED STATUTES) BELOW WAS DRAFTED
20 BY THE PROPONENTS OF THE INITIATIVE. THE INITIATED MEASURE IS
21 INCLUDED ON THE BALLOT AS A PROPOSED CHANGE TO CURRENT LAW
22 BECAUSE THE PROPONENTS GATHERED THE REQUIRED AMOUNT OF
23 PETITION SIGNATURES."

24 **SECTION 2. Safety clause.** The general assembly hereby
25 finds, determines, and declares that this act is necessary for the
26 immediate preservation of the public peace, health, and safety.

Bill Repealing Existing Law

A BILL FOR AN ACT

101 **CONCERNING THE ELIMINATION OF THE REQUIREMENT THAT**
102 **CERTAIN INSURERS FILE COLORADO-SPECIFIC FINANCIAL**
103 **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 contains 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.

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1 *Be it enacted by the General Assembly of the State of Colorado:*
2 **SECTION 1.** In Colorado Revised Statutes,10-3-208, **repeal**
3 (8) as follows:
4 **10-3-208. Financial statements.** (8) ~~(a) As part of the~~
5 ~~financial statement required in subsection (1) of this section, each~~
6 ~~property and casualty insurer regulated under article 4 of this title shall~~
7 ~~submit to the commissioner the information required in schedule P of~~
8 ~~the national association of insurance commissioners (NAIC) annual~~
9 ~~statement filed with the commissioner. The information shall be~~
10 ~~provided for Colorado business only for the following lines of~~
11 ~~insurance and shall include all information required to fully complete~~
12 ~~each column of each applicable part of schedule P of the convention~~
13 ~~blank for the annual statement adopted by the NAIC:~~

1 ~~(I) Private passenger automobile total;~~

2 ~~(II) Commercial automobile total;~~

3 ~~(III) Homeowners multiple peril;~~

4 ~~(IV) Farmowners multiple peril;~~

5 ~~(V) Commercial multiple peril;~~

6 ~~(VI) Medical malpractice; and~~

7 ~~(VII) Other liability.~~

8 ~~(b) For purposes of complying with the requirements of this~~

9 ~~subsection (8), a property and casualty insurer shall not be required to~~

10 ~~report information for calendar years commencing prior to January 1,~~

11 ~~2002.~~

12 **SECTION 2. Applicability.** This act applies to annual

13 financial statements filed on or after the effective date of this act.

14 **SECTION 3. Safety clause.** The general assembly hereby

15 finds, determines, and declares that this act is necessary for the

16 immediate preservation of the public peace, health, and safety.

Bill Amending and Reorganizing Entire Titles, Articles, or Parts and Repealing the Relocated Provisions

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF THE CREATIVE INDUSTRIES DIVISION**
102 **WITHIN THE COLORADO OFFICE OF ECONOMIC**
103 **DEVELOPMENT, AND, IN CONNECTION THEREWITH,**
104 **RECODIFYING THE STATUTORY PROVISIONS THAT CREATE THE**
105 **COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA, THE**
106 **COUNCIL ON CREATIVE INDUSTRIES, AND THE ART IN PUBLIC**
107 **PLACES PROGRAM.**

Bill Summary

[Drafting note: This bill reorganizes existing provisions of statutory law for purposes of clarity. Section and subsection numbers and paragraph letters have changed, but no substantive amendments to the operative provisions have been made except where indicated by capitalized or stricken type. Where section and subsection numbers and paragraph letters have changed, the prior designations are indicated by bold, bracketed type.]

Currently, the office of film, television, and media, the state council on the arts, and the art in public places program are all established within the Colorado office of economic development but are not placed in the same location in statute. The bill creates a creative industries division (division) within the Colorado office of economic development and reorganizes the statutory provisions that create the office of film, television, and media (office), the state council on the arts, and the art in public places program (program) into a new part. The bill renames the state council on the arts as the council on creative industries (council) and authorizes the council to establish policies for the council, the office, and the program. The bill specifies that the director of the council is the director of the division.

In addition, the bill requires the director of the Colorado office of economic development to make funding recommendations to the governor and the general assembly for the operation of the council, the program, and the office. The bill directs the general assembly to make annual appropriations to the division, in such form as the general

assembly deems appropriate, for the operation of the council, the office, and the program.

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

SECTION 1. In Colorado Revised Statutes, **add with amended and relocated provisions** part 3 to article 48.5 of title 24 as follows:

PART 3

CREATIVE INDUSTRIES DIVISION

24-48.5-301. Creative industries division - funding recommendations. (1) THERE IS HEREBY CREATED WITHIN THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT THE CREATIVE INDUSTRIES DIVISION, REFERRED TO IN THIS PART 3 AS THE "DIVISION". THE DIRECTOR OF THE DIVISION IS THE PERSON WHO IS APPOINTED DIRECTOR OF THE COUNCIL ON CREATIVE INDUSTRIES BY THE DIRECTOR OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT. THE DIVISION IS COMPRISED OF THE OFFICE OF FILM, TELEVISION, AND MEDIA, THE COUNCIL ON CREATIVE INDUSTRIES, AND THE ART IN PUBLIC PLACES PROGRAM, AND THE DIRECTOR OF THE DIVISION SHALL OVERSEE SUCH OFFICE, COUNCIL, AND PROGRAM.

(2) THE DIRECTOR OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT SHALL MAKE FUNDING RECOMMENDATIONS TO THE GOVERNOR AND THE GENERAL ASSEMBLY FOR THE OPERATION OF THE COUNCIL ON CREATIVE INDUSTRIES, THE ART IN PUBLIC PLACES PROGRAM, AND THE OFFICE OF FILM, TELEVISION, AND MEDIA. THE GENERAL ASSEMBLY SHALL MAKE ANNUAL APPROPRIATIONS TO THE DIVISION, IN SUCH FORM AS THE GENERAL ASSEMBLY DEEMS APPROPRIATE, FOR THE OPERATION OF THE COUNCIL, THE PROGRAM,

1 AND THE OFFICE.

2 **24-48.5-302. [Formerly 24-48.8-102] Council on creative**
3 **industries - legislative declaration.** (1) The general assembly finds
4 and declares:

5 (a) That encouragement and support of the arts and humanities,
6 while primarily a matter for private and local initiative, is also an
7 appropriate matter of concern to the state government;

8 (b) That many of our citizens lack the opportunity to view,
9 enjoy, or participate in living theatrical performances, musical
10 concerts, operas, dance and ballet recitals, art exhibits, examples of
11 fine architecture, and the performing and visual arts generally;

12 (c) That, with increasing leisure time, the practice and
13 enjoyment of the arts and humanities are of increasing importance;

14 (d) That many of our citizens possess talents of an artistic and
15 creative nature ~~which~~ THAT cannot be utilized to their fullest extent
16 under existing conditions;

17 (e) That the general welfare of the people of the state will be
18 promoted by giving further recognition to the arts and humanities as a
19 vital part of our culture and heritage and as an important means of
20 expanding the scope of our community life;

21 (f) That it is desirable to establish a ~~state~~ council on ~~the arts~~
22 CREATIVE INDUSTRIES and to provide such recognition and assistance
23 as will encourage and promote the state's artistic and cultural progress;

24 (g) That it is the policy of the state to cooperate with private
25 patrons, private and public institutions, and professional and
26 nonprofessional organizations concerned with the arts and humanities
27 to ~~insure~~ ENSURE that the role of the arts and humanities in the life of
28 our communities will continue to grow and to play an ever more

significant part in the welfare and educational experience of our citizens and to establish the paramount position of this state in the nation and in the world as a cultural center;

(h) That all activities undertaken by the state in carrying out the policy set out in this section shall be directed toward encouraging and assisting, rather than in any way limiting, the freedom of artistic expression ~~which~~ THAT is essential for the well-being of the arts and humanities.

24-48.5-303. [Formerly 24-48.8-103] Council on creative industries - establishment of council - members - term of office - chair - compensation. (1) ~~(a)~~ There is hereby established within the ~~department of higher education~~ DIVISION a ~~state~~ council on ~~the arts~~ CREATIVE INDUSTRIES, referred to. . .

[Note: The remainder of the substantive provisions of this bill have been removed from this illustration.]

SECTION 7. Repeal of provisions being relocated in this act. In Colorado Revised Statutes, **repeal** part 2 of article 48.5, article 48.8, and article 80.5 of title 24.

SECTION 8. Repeal of provisions not being relocated in this act. In Colorado Revised Statutes, **repeal** 24-48.8-101 and 24-48.8-105.

SECTION 9. Effective date. This act takes effect July 1, 2010.

SECTION 10. 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.

Sunset Bill

A BILL FOR AN ACT

101 **CONCERNING THE CONTINUATION OF THE REGULATION OF**
102 **NATUROPATHIC DOCTORS BY THE DIRECTOR OF THE DIVISION**
103 **OF PROFESSIONS AND OCCUPATIONS IN THE DEPARTMENT OF**
104 **REGULATORY AGENCIES, AND, IN CONNECTION THEREWITH,**
105 **IMPLEMENTING THE DEPARTMENT'S SUNSET REVIEW**
106 **RECOMMENDATIONS.**

The title must include the name of the agency, division, or board in accordance with 24-34-104 (7)(a).

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.]

---

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

2 ***Recommendation 1***

3 **SECTION 1.** In Colorado Revised Statutes, 24-34-104, **amend**
4 (23)(a) introductory portion; **repeal** (13)(a)(V); and **add** (23)(a)(VIII)
5 as follows:

6 **24-34-104. General assembly review of regulatory agencies**
7 **and functions for repeal, continuation, or reestablishment -**

Do not update the IP to the canned language for those subsections that will automatically repeal in 2 years.

legislative declaration - repeal. (13) (a) The following agencies, functions, or both, will repeal on September 1, 2017:

(V) ~~The registering of naturopathic doctors by the director in accordance with article 37.3 of title 12, C.R.S.~~

(23) (a) The following agencies, functions, or both, ~~will~~ ARE SCHEDULED FOR repeal on September 1, 2022:

(VIII) THE REGISTRATION OF NATUROPATHIC DOCTORS BY THE DIRECTOR IN ACCORDANCE WITH ARTICLE 37.3 OF TITLE 12.

Do update the IP to the canned language for those subsections that will automatically repeal more than 2 years out.

SECTION 2. In Colorado Revised Statutes, 12-37.3-119, **amend** (1) as follows:

12-37.3-119. Repeal of article. (1) This ~~article~~ ARTICLE 37.3 is repealed, effective ~~September 1, 2017. Prior to the~~ SEPTEMBER 1, 2022. BEFORE ITS repeal, the department of regulatory agencies shall review registering of naturopathic doctors ~~as provided~~ in ACCORDANCE WITH section 24-34-104. ~~C.R.S.~~

In the organic statute containing the repeal date, **do not update** to the canned language the provisions describing what will be reviewed, unless recommended by the sunset report.
Do update to the canned language any

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 37.3 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

1 DOCTOR.
2 THE INSURANCE COMPANY SHALL INCLUDE ANY INFORMATION THE
3 DIRECTOR DETERMINES NECESSARY TO ENABLE THE DIRECTOR TO
4 CONDUCT A FURTHER INVESTIGATION AND HEARING.
5 *[Note: The remainder of the substantive provisions of this bill have*
6 *been removed from this illustration.]*
7 **SECTION 4. Act subject to petition - effective date.** This act
8 takes effect at 12:01 a.m. on the day following the expiration of the
9 ninety-day period after final adjournment of the general assembly
10 (August 9, 2017, if adjournment sine die is on May 10, 2017); except
11 that, if a referendum petition is filed pursuant to section 1 (3) of article
12 V of the state constitution against this act or an item, section, or part of
13 this act within such period, then the act, item, section, or part will not
14 take effect unless approved by the people at the general election to be
15 held in November 2018 and, in such case, will take effect on the date of
16 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 repealed.]

Bill Containing a Nonstatutory Section

A BILL FOR AN ACT

101 **CONCERNING THE EXEMPTION FROM LAWS REGULATING MORTGAGE**
102 **LOAN ORIGINATORS OF CERTAIN PERSONS PROVIDING SELLER**
103 **FINANCING FOR THE SALE OF A LIMITED NUMBER OF**
104 **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.

---

1 *Be it enacted by the General Assembly of the State of Colorado:*
2 **SECTION 1. Legislative declaration.** (1) The general
3 assembly hereby finds that:
4 (a) Colorado is currently experiencing a deep economic
5 recession;
6 (b) The housing market is vital to any economic recovery in
7 Colorado;
8 (c) The recovery of housing markets in Colorado, much like
9 other states, are impeded by tight credit market conditions and the
10 inability of borrowers to receive the financing necessary to purchase
11 real property and thereby relieve the markets of excess inventory; and
12 (d) In order for excess inventory to be consumed, and thereby
13 the housing market to recover, real property in Colorado must have the
14 ability to be conveyed using all available means of financing.

1 **SECTION 2.** In Colorado Revised Statutes, 12-61-904, **amend**
2 (1) introductory portion and (1)(b) as follows:
3 **12-61-904. Exemptions.** (1) Except as otherwise provided in
4 section 12-61-911, this part 9 ~~shall~~ DOES not apply to the following:
5 (b) ~~An individual who only offers or negotiates terms of a~~
6 ~~residential mortgage loan secured by a dwelling that served as the~~
7 ~~individual's residence~~ WITH RESPECT TO A RESIDENTIAL MORTGAGE
8 LOAN, A PERSON, ESTATE, OR TRUST THAT PROVIDES MORTGAGE
9 FINANCING FOR THE SALE OF NO MORE THAN THREE PROPERTIES IN ANY
10 TWELVE-MONTH PERIOD TO PURCHASERS OF SUCH PROPERTIES, EACH OF
11 WHICH IS OWNED BY SUCH PERSON, ESTATE, OR TRUST AND SERVES AS
12 SECURITY FOR THE LOAN;
13 **SECTION 3. Act subject to petition - effective date -**
14 **applicability.** (1) This act takes effect at 12:01 a.m. on the day
15 following the expiration of the ninety-day period after final
16 adjournment of the general assembly (August 7, 2012, if adjournment
17 sine die is on May 9, 2012); except that, if a referendum petition is filed
18 pursuant to section 1 (3) of article V of the state constitution against
19 this act or an item, section, or part of this act within such period, then
20 the act, item, section, or part will not take effect unless approved by the
21 people at the general election to be held in November 2012 and, in such
22 case, will take effect on the date of the official declaration of the vote
23 thereon by the governor.
24 (2) This act applies to acts occurring on or after the applicable
25 effective date of this act.

Bill Amending a Territorial Charter

A BILL FOR AN ACT

101 **CONCERNING THE TERRITORIAL CHARTER OF THE CITY OF BLACK**
102 **HAWK.**

Bill Summary

The bill repeals and reenacts, with amendments, the territorial charter for the city of Black Hawk, thereby providing for:

- The city boundaries;
- The form and composition of the city's government, including a city council consisting of a mayor and board of aldermen;
- The right of recall;
- Ordinance power;
- The time of elections and adoption of the municipal election code;
- The authority and method for initiative and referendum;
- Appointments in the city administration, including city manager, city attorney, and municipal judge;
- The specific powers and authority of the city; and
- The financial powers of the city.

---

1 *Be it enacted by the General Assembly of the State of Colorado:*
2 **SECTION 1. Repeal and reenact, with amendments,** the act
3 entitled "An Act to Incorporate the City of Black Hawk", approved
4 March 11, 1864, as follows:
5 **ARTICLE I**
6 **General Provisions**
7 **Section 1. Creation.** ON MARCH 11, 1864, THE CITY OF BLACK
8 HAWK, GILPIN COUNTY, TERRITORY OF COLORADO, CONSISTING OF THE
9 INHABITANTS OF THE DESIGNATED CITY BOUNDARY, WAS CREATED BY
10 THE PASSAGE OF AN ACT BY THE COUNCIL AND HOUSE OF

1 REPRESENTATIVES OF COLORADO TERRITORY. THE CITY OF BLACK
2 HAWK HAS FUNCTIONED AS A TERRITORIAL CHARTER CITY SINCE 1864
3 PURSUANT TO SAID CHARTER, AS SUBSEQUENTLY AMENDED BY THE
4 COUNCIL AND HOUSE OF REPRESENTATIVES OF COLORADO TERRITORY
5 AND THE GENERAL ASSEMBLY OF THE STATE OF COLORADO, AND AS
6 PROVIDED BY SECTION 31-1-202, COLORADO REVISED STATUTES.
7 **Section 2. Name, powers, and interpretation.** THE CITY SHALL
8 CONTINUE AS A TERRITORIAL CHARTER CITY PURSUANT TO THE
9 ORIGINAL CHARTER ADOPTED IN 1864, AS AMENDED HEREIN, AS A BODY
10 POLITIC AND CORPORATE UNDER THE NAME AND STYLE OF BLACK HAWK
11 AND, BY THAT NAME, SHALL HAVE PERPETUAL SUCCESSION; MAY SUE
12 AND BE SUED, PLEAD AND BE IMPLEADED IN ALL COURTS OF LAW OR
13 EQUITY; MAY HAVE AND USE A COMMON SEAL AND ALTER THE SAME AT
14 PLEASURE; MAY ADOPT ORDINANCES NOT INCONSISTENT WITH THIS
15 CHARTER; AND SHALL HAVE THE RIGHT OF SELF-GOVERNMENT IN LOCAL
16 AND MUNICIPAL MATTERS AND ALL THE POWERS CONFERRED BY THE
17 CONSTITUTION AND STATUTES OF THE STATE OF COLORADO UPON
18 MUNICIPAL CORPORATIONS, SUBJECT ONLY TO THE SPECIFIC PROVISIONS
19 OF THIS CHARTER WHICH MAY EXPAND, LIMIT, OR AMEND THE POWERS
20 GRANTED TO STATUTORY MUNICIPALITIES. IT IS THE INTENT OF THE
21 GENERAL ASSEMBLY TO LEGISLATIVELY OVERRULE *CENTRAL CITY*
22 *OPERA HOUSE ASSOCIATION V. CITY OF CENTRAL*, 650 P.2d 1349 (Colo.
23 App. 1982) AS APPLIED TO THIS CHARTER, TO THE EXTENT SUCH CASE
24 OR PREVIOUS CASES CONSTRUING TERRITORIAL CHARTERS LIMIT
25 TERRITORIAL CHARTER CITIES TO POWERS EXPRESSLY GRANTED. THE
26 GENERAL ASSEMBLY INTENDS THAT THIS CHARTER SHALL BE BROADLY
27 CONSTRUED TO PROVIDE THE CITY OF BLACK HAWK, ACTING BY ITS
28 CITIZENS AND THROUGH ITS CITY COUNCIL, THE BROADEST RANGE OF

1 POWER GRANTED MUNICIPALITIES BY COLORADO LAW AND AS PROVIDED
2 IN THIS CHARTER. IF A POWER IS EXPRESSLY GRANTED OR GRANTED BY
3 IMPLICATION TO MUNICIPALITIES BY THE GENERAL ASSEMBLY AND
4 THERE IS NOT A CONFLICT BETWEEN THIS CHARTER AND SUCH STATUTE,
5 THE CITY MAY EXERCISE THE POWER AS PROVIDED IN THE STATUTE. IF
6 THERE IS A CONFLICT BETWEEN STATUTES GOVERNING MUNICIPALITIES
7 GENERALLY AND THIS CHARTER, THIS CHARTER SHALL CONTROL.
8 **Section 3. Boundaries.** THE BOUNDARIES OF THE CITY OF
9 BLACK HAWK SHALL BE THE EXISTING BOUNDARIES, AS SUCH
10 BOUNDARIES MAY BE AMENDED IN THE FUTURE IN ACCORDANCE WITH
11 COLORADO LAW OR BY AMENDMENT OF THIS CHARTER. THE EXISTING
12 BOUNDARIES INCLUDE THOSE BOUNDARIES DESCRIBED IN THE CHARTER
13 ADOPTED MARCH 11, 1864, AND ALL ADDITIONS THERETO.
14 **Section 4. Specific powers.** THE INHABITANTS OF THE CITY OF
15 BLACK HAWK, BY THE NAME AND STYLE AFORESAID, SHALL HAVE THE
16 POWER TO SUE AND BE SUED, TO PLEAD AND BE IMPLEADED, AND TO
17 DEFEND AND BE DEFENDED IN ALL COURTS OF LAW AND EQUITY AND IN
18 ALL ACTIONS WHATSOEVER, TO ACQUIRE BY PURCHASE, GIFT, LEASE, OR

[Note: The remainder of this bill has been removed from this illustration.]

Bill Making a Supplemental Appropriation for the Payment of a Judgment

A BILL FOR AN ACT

101 CONCERNING AN APPROPRIATION FOR THE SATISFACTION OF A
102 JUDGMENT AGAINST THE DEPARTMENT OF INSTITUTIONS IN
103 THE CASE OF FIEBIG V. THE DEPARTMENT OF INSTITUTIONS.

Bill Summary

The bill makes an appropriation for the payment of a judgment against the department of institutions.

---

1 *Be it enacted by the General Assembly of the State of Colorado:*
2 **SECTION 1. Appropriation.** (1) In addition to any other
3 appropriation for the current fiscal year, there is hereby appropriated, to
4 the department of institutions, out of cash funds received from the
5 department of social services pursuant to subsection (2) of this section,
6 the sum of $50,391, or so much thereof as may be necessary, for the
7 satisfaction of a judgment in favor of Joseph Fiebig and against the
8 department of institutions, affirmed by the Colorado court of appeals in
9 case no. 86CB14817. Said amount includes $49,226 for the judgment
10 and $1,165 as interest thereon computed from the date of the judgment
11 through May 31, 1990.
12 (2) In addition to any other appropriation for the current fiscal
13 year, there is hereby appropriated, to the department of social services,
14 the sum of $50,391, or so much thereof as may be necessary, for the
15 additional costs of state-operated class IV nursing home care under the
16 medical assistance program arising from the judgment described in

1 subsection (1) of this section. Of said sum, $24,398 is from the general
2 fund, and $25,993 is from federal funds.
3 **SECTION 2. Safety clause.** The general assembly hereby
4 finds, determines, and declares that this act is necessary for the
5 immediate preservation of the public peace, health, and safety.

Bill Making a Supplemental Appropriation by Amending a Prior Long Bill

A BILL FOR AN ACT

101 **CONCERNING A SUPPLEMENTAL APPROPRIATION TO THE**

102 **DEPARTMENT OF MILITARY AFFAIRS.**

Bill Summary

The bill makes a supplemental appropriation to the department of military affairs.

---

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

2 **SECTION 1. Appropriation to the department of military**

3 **affairs for the fiscal year beginning July 1, 1997.** In Session Laws of

4 Colorado 1997, section 2 of chapter 310, (SB 97-215), **amend** Part XIII

5 as follows:

6 Section 2. **Appropriation.**

	ITEM & SUBTOTAL	TOTAL	APPROPRIATION FROM GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	CASH FUNDS EXEMPT	FEDERAL FUNDS
	$	$	$	$	$	$	$
1			**PART XIII**				
2			**DEPARTMENT OF MILITARY AFFAIRS**				
3							
4	**(1) EXECUTIVE DIRECTOR AND ARMY NATIONAL GUARD**						
5	Personal Services	1,169,348	1,106,733		3,298[a]		59,317
6			(25.7 FTE)		(0.1 FTE)		(1.5 FTE)
7	Health, Life, and Dental	168,288	61,659				106,629
8	Short-term Disability	6,778	2,722				4,056
9	Salary Survey and						
10	Anniversary Increases	142,691	55,649				87,042
11	Workers' Compensation	88,484	56,611				31,873
12	Operating Expenses	792,742	461,514		6,580[a]		324,648
13	Legal Services for ~~110~~ 210						
14	hours	~~5,280~~	~~5,280~~				

		ITEM & SUBTOTAL	TOTAL	APPROPRIATION FROM				
				GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	CASH FUNDS EXEMPT	FEDERAL FUNDS
		$	$	$	$	$	$	$
1		10,080		10,080				
2	Purchase of Services from							
3	Computer Center	1,304		1,304				
4	Payment to Risk							
5	Management and Property							
6	Funds	172,988		172,988				
7	Vehicle Lease Payments	49,848		49,848				
8	Leased Space	31,314		31,314				
9	Lease Purchase of Energy							
10	Conservation Equipment	23,000		23,000				
11	Utilities	711,491		560,695			6,235(T)[b]	144,561
12	Purchase of Inmate Labor							
13	Services from the							
14	Department of Corrections	5,237		5,237				

	ITEM & SUBTOTAL	TOTAL	APPROPRIATION FROM GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	CASH FUNDS EXEMPT	FEDERAL FUNDS
	$	$	$	$	$	$	$
Local Armory Incentive Plan	23,527				23,527[a]		
Colorado National Guard Tuition Fund	406,753		406,753				
Army National Guard Cooperative Agreement	1,056,935						1,056,935
							(7.0 FTE)
		~~4,856,008~~					
		4,860,808					

[a] These amounts shall be from fees, including armory rental fees.

[b] This amount shall be from federal funds appropriated in the Department of Local Affairs, Office of Emergency Management.

(2) Air National Guard

		ITEM & SUBTOTAL	TOTAL	APPROPRIATION FROM GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	CASH FUNDS EXEMPT	FEDERAL FUNDS
		$	$	$	$	$	$	$
1	Operations and							
2	Maintenance Agreement for							
3	Buckley/Greeley	2,050,254		500,125(M)				1,550,129
4		(24.0 FTE)						
5	Buckley Tenant							
6	Reimbursed Employees	506,060						506,060
7		(14.0 FTE)						
8	Security for Buckley Air							
9	National Guard Base	485,385						485,385
10		(17.0 FTE)						
11			3,041,699					
12								
13	**(3) FEDERAL FUNDED PROGRAMS[130]**							
14	Personal Services	78,026,284						

		ITEM & SUBTOTAL	TOTAL	APPROPRIATION FROM GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	CASH FUNDS EXEMPT	FEDERAL FUNDS
		$	$	$	$	$	$	$
1		(1,103.0 FTE)						
2	Operating and Maintenance	24,062,349						
3	Construction	1,705,663						
4	Supplies and Services	385,300						
5			104,179,596					104,179,596
6								
7	**(4) CIVIL AIR PATROL**							
8	Personal Services	83,526						
9		(2.0 FTE)						
10	Operating Expenses	23,813						
11	Aircraft Maintenance	35,400						
12			142,739	142,739				
13								
14	**TOTALS PART XIII**							

	ITEM & SUBTOTAL	TOTAL	APPROPRIATION FROM GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	CASH FUNDS EXEMPT	FEDERAL FUNDS
	$	$	$	$	$	$	$
(MILITARY AFFAIRS)[2, 3, 4]		~~$112,220,042~~	~~$3,644,171~~		$33,405	$6,235[a]	$108,536,231
		$112,224,842	$3,648,971				

[a] Of this amount, $6,235 contains a (T) notation.

FOOTNOTES -- The following statements are referenced to the numbered footnotes throughout section 2.

2 (Governor lined through this provision. See L. 97, p. 2164.)

3 All Departments, Totals -- The General Assembly requests that copies of all reports requested in other footnotes contained in this act be delivered to the Joint Budget Committee and the majority and minority leadership in each house of the General Assembly.

4 (Governor lined through this provision. See L. 97, p. 2165.)

			APPROPRIATION FROM				
ITEM & SUBTOTAL	TOTAL	GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	CASH FUNDS EXEMPT	FEDERAL FUNDS
$	$	$	$	$	$	$

1 130 Department of Military Affairs, Federal Funded Programs -- These federal funds are shown for informational purposes. These funds are not to be included
2 in the spending authority for the Department because these funds do not flow through the accounting system of the state. It is the intent of the General
3 Assembly that these programs, funding, and FTE are included to demonstrate the full scope of activities of the Department of Military Affairs.
4

1 **SECTION 2. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety.

Bill to Be Referred to the Voters at the next General Election

A BILL FOR AN ACT

101 **CONCERNING THE ESTABLISHMENT OF A BINDING PREFERENCE**
102 **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 such binding vote assignments are only binding on the first vote to choose a presidential candidate.

The bill refers the question of such a presidential primary election to the electors of Colorado at the next general election.

---

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 11 to article
3 4 of title 1 as follows:

4 PART 11

5 PRESIDENTIAL PRIMARY ELECTIONS

6 **1-4-1101. Definitions.** AS USED IN THIS PART 11, UNLESS THE
7 CONTEXT OTHERWISE REQUIRES:

8 (1) "PRESIDENTIAL PRIMARY ELECTION" MEANS A PRIMARY
9 ELECTION CONDUCTED PURSUANT TO SECTION 1-4-1102.

10 (2) "THRESHOLD CANDIDATE" MEANS, WITH RESPECT TO THIS
11 STATE AS A WHOLE OR ANY CONGRESSIONAL DISTRICT WITHIN THIS STATE,

1 A CANDIDATE IN A PRESIDENTIAL PRIMARY ELECTION WHO RECEIVES AT
2 LEAST FIFTEEN PERCENT OF THE VOTES CAST IN THIS ENTIRE STATE OR ANY
3 CONGRESSIONAL DISTRICT WITHIN THIS STATE FOR ALL CANDIDATES ON
4 THE PRESIDENTIAL PRIMARY ELECTION BALLOT WHO ARE OF THE SAME
5 POLITICAL PARTY AS THAT CANDIDATE.

6 **1-4-1102. Presidential primary elections - when - conduct.**
7 (1) A PRESIDENTIAL PRIMARY ELECTION SHALL BE HELD AT THE REGULAR
8 POLLING PLACES IN EACH PRECINCT ON THE FOURTH TUESDAY OF
9 FEBRUARY IN YEARS IN WHICH A UNITED STATES PRESIDENTIAL ELECTION
10 IS TO BE HELD FOR THE SELECTION OF DELEGATES TO NATIONAL POLITICAL
11 CONVENTIONS WHICH WILL SELECT PRESIDENTIAL CANDIDATES OF
12 POLITICAL PARTIES TO BE VOTED FOR AT THE SUCCEEDING GENERAL
13 ELECTION.

14 (2) EACH POLITICAL PARTY WHO IS REPRESENTED BY A CANDIDATE
15 ENTITLED TO PARTICIPATE IN THE COLORADO PRESIDENTIAL PRIMARY
16 ELECTION PURSUANT TO SECTION 1-4-1103 IS ENTITLED TO PARTICIPATE
17 IN THE PRIMARY ELECTION AND SHALL HAVE A SEPARATE PARTY BALLOT.
18 AT SUCH PRESIDENTIAL PRIMARY ELECTION, AN ELECTOR MAY ONLY VOTE
19 FOR A CANDIDATE WHO REPRESENTS THE POLITICAL PARTY TO WHICH THE
20 ELECTOR HAS DECLARED AN AFFILIATION. AN UNAFFILIATED REGISTERED
21 ELECTOR MAY DECLARE AN AFFILIATION TO THE ELECTION JUDGES OF THE
22 PRESIDENTIAL PRIMARY ELECTION AS PROVIDED IN SECTION 1-7-201. THE
23 PRESIDENTIAL PRIMARY ELECTION OF ALL POLITICAL PARTIES SHALL BE
24 HELD AT THE SAME TIME AND AT THE SAME POLLING PLACES AND SHALL
25 BE CONDUCTED BY THE SAME ELECTION OFFICIALS.

26 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS PART 11, ALL
27 PRESIDENTIAL PRIMARY ELECTIONS SHALL BE CONDUCTED IN THE SAME
28 MANNER AS OTHER PRIMARY ELECTIONS AS PROVIDED IN PART 2 OF

1 ARTICLE 7 OF THIS TITLE 1 INSOFAR AS THE PROVISIONS THEREOF ARE
2 APPLICABLE, AND THE ELECTION OFFICERS FOR PRIMARY ELECTIONS SHALL
3 HAVE THE SAME POWERS AND SHALL PERFORM THE SAME DUTIES AS THOSE
4 PROVIDED BY LAW FOR GENERAL ELECTIONS.
5 (4) ALL EXPENSES INCURRED IN THE PREPARATION OR CONDUCT OF
6 THE PRESIDENTIAL PRIMARY ELECTION SHALL BE PAID OUT OF THE
7 TREASURY OF THE COUNTY OR STATE, AS THE CASE MAY BE, IN THE SAME
8 MANNER AS FOR GENERAL ELECTIONS.
9 **1-4-1103. Names on ballots.** (1) THE SECRETARY OF STATE SHALL
10 CERTIFY THE NAMES AND PARTY AFFILIATIONS OF THE CANDIDATES TO BE
11 PLACED ON THE PRESIDENTIAL PRIMARY ELECTION BALLOTS FIFTY-FIVE
12 DAYS BEFORE SUCH ELECTION IS TO BE HELD. THE ONLY CANDIDATES
13 WHOSE NAMES ARE PLACED ON BALLOTS FOR SUCH ELECTIONS ARE THOSE
14 CANDIDATES WHO:
15 (a) ARE ELIGIBLE TO RECEIVE PAYMENTS FROM THE FEDERAL
16 PRESIDENTIAL CAMPAIGN FUND PURSUANT TO 26 U.S.C. 9003 AT THE TIME
17 CANDIDATES' NAMES ARE TO BE CERTIFIED BY THE SECRETARY OF STATE
18 PURSUANT TO THIS SUBSECTION (1); AND
19 (b) ARE SEEKING THE NOMINATION FOR PRESIDENT OF A POLITICAL
20 PARTY WHOSE NOMINEE FOR PRESIDENT OF THE UNITED STATES RECEIVED
21 AT LEAST TWENTY PERCENT OF THE VOTES CAST BY QUALIFIED ELECTORS
22 IN COLORADO AT THE LAST PRESIDENTIAL ELECTION.
23 (2) THE NAMES OF CANDIDATES APPEARING ON ANY PRESIDENTIAL
24 PRIMARY BALLOT SHALL BE IN ALPHABETICAL ORDER.
25 **1-4-1104. Binding of delegates.** (1) ANY PERSON CHOSEN AS A
26 COLORADO DELEGATE TO A NATIONAL POLITICAL CONVENTION AT WHICH
27 A PRESIDENTIAL CANDIDATE WILL BE CHOSEN BY A POLITICAL PARTY
28 WHOSE CANDIDATE RECEIVED AT LEAST TWENTY PERCENT OF THE TOTAL

1 VOTES CAST IN COLORADO FOR PRESIDENTIAL CANDIDATES AT THE LAST
2 PRESIDENTIAL ELECTION HELD SHALL, WITHIN FIVE DAYS OF BEING
3 SELECTED AS A DELEGATE, NOTIFY THE SECRETARY OF STATE BY MAIL
4 THAT SUCH PERSON IS A DELEGATE AND SHALL INCLUDE THE MAILING
5 ADDRESS OF THAT PERSON, STATING IN SUCH NOTICE THE POLITICAL PARTY
6 WHICH HAS SELECTED SUCH PERSON AS A DELEGATE AND THE CANDIDATES
7 OF SUCH POLITICAL PARTY FOR WHICH SUCH PERSON WOULD PREFER TO
8 RECEIVE A BINDING VOTE ASSIGNMENT IN DESCENDING ORDER OF
9 PREFERENCE.
10 (2) THE SECRETARY OF STATE SHALL TABULATE THE NUMBER OF
11 VOTES RECEIVED BY EACH CANDIDATE NAMED ON THE PRESIDENTIAL
12 PRIMARY ELECTION BALLOTS, BOTH FOR THE ENTIRE STATE AND FOR EACH
13 CONGRESSIONAL DISTRICT.
14 (3) (a) THE SECRETARY OF STATE SHALL CALCULATE:
15 (I) THE RATIO OF VOTES RECEIVED WITHIN THE ENTIRE STATE BY
16 EACH CANDIDATE WHO IS A THRESHOLD CANDIDATE WITH RESPECT TO THIS
17 STATE AS A WHOLE AS A PERCENTAGE OF THE VOTES RECEIVED BY ALL
18 SUCH THRESHOLD CANDIDATES OF THE SAME POLITICAL PARTY; AND
19 (II) THE RATIO OF VOTES RECEIVED WITHIN EACH CONGRESSIONAL
20 DISTRICT OF THIS STATE BY EACH CANDIDATE WHO IS A THRESHOLD
21 CANDIDATE WITH RESPECT TO SUCH CONGRESSIONAL DISTRICT AS A
22 PERCENTAGE OF ALL VOTES RECEIVED WITHIN THAT CONGRESSIONAL
23 DISTRICT BY ALL SUCH THRESHOLD CANDIDATES OF THE SAME POLITICAL
24 PARTY.
25 (b) USING THE CALCULATIONS SPECIFIED IN SUBSECTION (3)(a) OF
26 THIS SECTION, THE SECRETARY OF STATE SHALL ASSIGN BINDING VOTE
27 ASSIGNMENTS TO EACH DELEGATE TO A NATIONAL POLITICAL CONVENTION
28 AT WHICH A PRESIDENTIAL CANDIDATE IS TO BE CHOSEN BY A POLITICAL

1 PARTY, AT LEAST ONE OF WHOSE CANDIDATES IS A THRESHOLD CANDIDATE
2 WITH RESPECT TO THIS STATE AS A WHOLE OR ANY CONGRESSIONAL
3 DISTRICT WITHIN THIS STATE. TO THE EXTENT MATHEMATICALLY
4 POSSIBLE, THE SECRETARY OF STATE SHALL MAKE SUCH BINDING VOTE
5 ASSIGNMENTS SO THAT, WITHIN THE ENTIRE STATE AND EACH
6 CONGRESSIONAL DISTRICT, DELEGATES ARE ASSIGNED TO CAST VOTES AT
7 SUCH CONVENTIONS FOR THRESHOLD CANDIDATES IN THE SAME
8 PROPORTIONS AS SUCH THRESHOLD CANDIDATES RECEIVED VOTES AS
9 COMPARED TO THE VOTES RECEIVED BY ALL CANDIDATES OF THE SAME
10 PARTY WHO ARE THRESHOLD CANDIDATES WITH RESPECT TO THE ENTIRE
11 STATE OR A PARTICULAR CONGRESSIONAL DISTRICT.
12 (4) THE SECRETARY OF STATE SHALL, TO THE EXTENT
13 PRACTICABLE, ASSIGN BINDING VOTE ASSIGNMENTS FOR CANDIDATES TO
14 DELEGATES ACCORDING TO THE CANDIDATE PREFERENCE LIST SUPPLIED TO
15 THE SECRETARY OF STATE BY EACH DELEGATE.
16 (5) THE SECRETARY OF STATE SHALL NOTIFY EACH DELEGATE OF
17 THAT DELEGATE'S BINDING VOTE ASSIGNMENTS BY MAIL AT LEAST SEVEN
18 DAYS BEFORE THE FIRST DAY OF THE CONVENTION FOR WHICH SUCH
19 DELEGATE HAS BEEN SELECTED TO ATTEND. AT SUCH CONVENTION, EACH
20 DELEGATE ASSIGNED A BINDING VOTE ASSIGNMENT MUST VOTE AS
21 DIRECTED ON SUCH BINDING VOTE ASSIGNMENT ONLY THE FIRST TIME
22 VOTES ARE CASE AT THE ELECTION WHICH WILL SERVE TO CHOOSE
23 OFFICIALLY THE PRESIDENTIAL CANDIDATE OF THAT DELEGATE'S
24 POLITICAL PARTY. ON SUBSEQUENT VOTES EACH DELEGATE MAY
25 DISREGARD THE BINDING VOTE ASSIGNMENT.
26 (6) DELEGATES MAY BE RELEASED FROM THEIR BINDING VOTE

1 ASSIGNMENTS FOR THE FIRST TIME VOTES ARE CAST AT THE ELECTION
2 WHICH WILL SERVE TO CHOOSE OFFICIALLY THE PRESIDENTIAL CANDIDATE
3 OF THE DELEGATE'S POLITICAL PARTY ONLY UPON RECEIVING NOTICE FROM
4 THE SECRETARY OF STATE STATING THAT THE SECRETARY OF STATE HAS
5 BEEN OFFICIALLY NOTIFIED BY THAT DELEGATE'S NATIONAL POLITICAL
6 PARTY THAT THE CANDIDATE TO WHICH THE DELEGATE IS ASSIGNED TO
7 VOTE HAS DIRECTED THAT SUCH DELEGATES ARE TO BE FREED FROM SUCH
8 ASSIGNMENTS.

9 **SECTION 2. Refer to people under referendum.** At the
10 election held on November 3, 2016, the secretary of state shall submit this
11 act by its ballot title to the registered electors of the state for their
12 approval or rejection. Each elector voting at the election may cast a vote
13 either "Yes/For" or "No/Against" on the following ballot title: "Shall the
14 state of Colorado conduct a presidential primary election at which
15 electors shall cast votes for qualified candidates of their political party,
16 and the results of which shall bind delegates to national political
17 conventions for the first vote to choose a presidential candidate at such
18 conventions?" Except as otherwise provided in section 1-40-123,
19 Colorado Revised Statutes, if a majority of the electors voting on the
20 ballot title vote "Yes/For", then the act will become part of the Colorado
21 Revised Statutes.

Bill to Be Referred to the Voters at the next Election
Subject to TABOR Provisions

A BILL FOR AN ACT

101 **CONCERNING AN INCREASE IN THE STATE SALES AND USE TAX ON**
102 **RETAIL SALES OF ALCOHOL BEVERAGES TO PROVIDE FUNDING**
103 **FOR THE CHILDREN'S BASIC HEALTH PLAN, AND, IN CONNECTION**
104 **THEREWITH, INCREASING BY TWO PERCENT THE RATE OF THE**
105 **SALES AND USE TAX ON ALCOHOL BEVERAGES SOLD OR**
106 **PURCHASED AT RETAIL; REDUCING THE NEW TAX BY AN AMOUNT**
107 **EQUAL TO ANY FUTURE INCREASE IN THE SALES AND USE TAX**
108 **RATE ON ALCOHOL BEVERAGES; EXEMPTING THE TAX FROM THE**
109 **TOTAL LIMIT ON SALES AND USE TAX THAT MAY BE LEVIED; AND**
110 **REQUIRING THE NET REVENUE FROM THE TAX TO BE CREDITED**
111 **TO THE CHILDREN'S BASIC HEALTH PLAN TRUST VIA THE OLD**
112 **AGE PENSION FUND AND THE STATE GENERAL FUND.**

Bill Summary

The bill refers to the voters a measure to authorize a 2% increase in the state sales and use tax on alcohol beverages. In accordance with the state constitution, all of the net revenues from the tax increase will be deposited in the old age pension fund, from which they will be credited to the state general fund. An amount equal to the amount credited to the old age pension fund must be appropriated from the state general fund to the children's basic health plan trust.

The bill exempts the tax from the limit on the total sales and use tax that may be levied.

---

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

2 **SECTION 1.** In Colorado Revised Statutes, 25.5-8-105, **add** (3.5)
3 as follows:

1 **25.5-8-105. Trust and supplemental settlement money account**
2 **- created.** (3.5) PURSUANT TO SECTION 39-26-123 (6), BEGINNING IN THE
3 2009-10 FISCAL YEAR AND EACH FISCAL YEAR THEREAFTER, MONEY FROM
4 THE STATE GENERAL FUND SHALL BE APPROPRIATED TO AND BECOME PART
5 OF THE CHILDREN'S BASIC HEALTH PLAN TRUST.
6 **SECTION 2.** In Colorado Revised Statutes, 29-2-108, **amend** (3)
7 as follows:
8 **29-2-108. Limitation on amount.** (3) A tax imposed pursuant to
9 section 24-90-110.7 (3)(f), 29-1-204.5 (3)(f.1), 29-2-103.7, 29-2-103.8,
10 29-2-103.9, 29-25-112, 30-11-107.5, 30-11-107.7, 30-11-107.9,
11 32-18-107, ~~or 37-50-110, C.R.S.~~ 37-50-110, 39-26-106 (1)(c), OR
12 39-26-202 (1)(b.5), and the additional tax authorized by section
13 30-20-604.5, if imposed, shall be exempt from the six and ninety
14 one-hundredths percent limitation imposed by subsection (1) of this
15 section.
16 **SECTION 3.** In Colorado Revised Statutes, 39-26-102, **add** (1.2)
17 as follows:
18 **39-26-102. Definitions.** As used in this article 26, unless the
19 context otherwise requires:
20 (1.2) "ALCOHOL BEVERAGE" HAS THE SAME MEANING AS SET
21 FORTH IN SECTION 12-47-103 (2).
22 **SECTION 4.** In Colorado Revised Statutes, 39-26-105, **add** (1)(f)
23 as follows:
24 **39-26-105. Vendor liable for tax.** (1) (f) EVERY RETAILER OR
25 VENDOR WHO SELLS ALCOHOL BEVERAGES SUBJECT TO SALES TAX
26 IMPOSED PURSUANT TO SECTION 39-26-106 (1)(c) IS LIABLE AND
27 RESPONSIBLE FOR THE PAYMENT OF AN AMOUNT EQUAL TO THE AMOUNT
28 OF SALES TAX IMPOSED ON SUCH ALCOHOL BEVERAGES LESS THREE AND

1 ONE-THIRD PERCENT OF THE AMOUNT TO COVER THE VENDOR'S EXPENSE
2 IN THE COLLECTION AND REMITTANCE OF THE TAX SET FORTH IN THIS
3 SECTION. THE PAYMENT SHALL BE MADE IN THE SAME MANNER AS ANY
4 OTHER PAYMENT TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
5 REVENUE THAT IS REQUIRED PURSUANT TO THIS SECTION; EXCEPT THAT
6 THE RETAILER OR VENDOR MUST NOTIFY THE EXECUTIVE DIRECTOR OF THE
7 AMOUNT THAT IS BEING PAID PURSUANT TO THIS SUBSECTION (1)(f).
8 **SECTION 5.** In Colorado Revised Statutes, 39-26-106, **add**
9 (1)(c) as follows:
10 **39-26-106. Schedule of sales tax.** (1) (c) (I) ON AND AFTER JULY
11 1, 2009, THERE IS IMPOSED UPON ALL SALES OF ALCOHOL BEVERAGES A
12 TAX AT THE RATE OF TWO PERCENT OF THE AMOUNT OF THE SALE TO BE
13 COMPUTED IN ACCORDANCE WITH SCHEDULES OR SYSTEMS APPROVED BY
14 THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE. THIS TAX IS
15 IN ADDITION TO THE TAX IMPOSED PURSUANT TO SUBSECTION (1)(a)(II) OF
16 THIS SECTION AND SHALL BE A TAX RATE INCREASE OF THE STATE SALES
17 TAX FOR PURPOSES OF SECTION 20 (4)(a) OF ARTICLE X OF THE STATE
18 CONSTITUTION.
19 (II) THE RATE OF THE TAX IMPOSED PURSUANT TO THIS
20 SUBSECTION (1)(c) SHALL BE REDUCED BY AN AMOUNT EQUAL TO ANY
21 INCREASE IN THE RATE OF THE SALES TAX THAT IS IMPOSED ON THE SALE
22 OF ALCOHOL BEVERAGES THAT IS APPROVED BY THE VOTERS OF THIS
23 STATE ON OR AFTER JULY 1, 2009.
24 **SECTION 6.** In Colorado Revised Statutes, **amend** 39-26-112 as
25 follows:
26 **39-26-112. Excess tax - remittance.** If any vendor, during any
27 reporting period, collects as a tax an amount in excess of three percent of
28 all taxable sales made prior to January 1, 2001, and two and ninety

one-hundredths percent OR FOUR AND NINETY-ONE HUNDREDTHS PERCENT, DEPENDING ON WHETHER THE TAX IMPOSED PURSUANT TO SECTION 39-26-106 (1)(c) IS COLLECTED, of all taxable sales made on or after January 1, 2001, such vendor shall remit to the executive director of the department of revenue the full net amount of the tax imposed in this part 1 and also such excess. The retention by the retailer or vendor of any excess of tax collections over the said percentage of the total taxable sales of such retailer or vendor or the intentional failure to remit punctually to the executive director the full amount required to be remitted by the provisions of this part 1 is declared to be unlawful and constitutes a misdemeanor.

SECTION 7. In Colorado Revised Statutes, 39-26-123, **amend** (1)(a); and **add** (1)(a.5) and (6) as follows:

39-26-123. Receipts - disposition - transfers of general fund surplus - alcohol beverages net revenue - sales and use tax holding fund - creation - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Net revenue" means the gross amount of sales and use tax receipts collected under the provisions of this article 26, less a fee retained by vendors for the collection and remittance of the tax pursuant to section 39-26-105 (1) and less refunds and adjustments made by the department of revenue in conjunction with its collection and enforcement duties under this article 26; EXCEPT THAT "NET REVENUE" DOES NOT INCLUDE THE NET REVENUE FROM THE SALES AND USE TAX ON ALCOHOL BEVERAGES.

(a.5) "NET REVENUE FROM THE SALES AND USE TAX ON ALCOHOL BEVERAGES" MEANS THE GROSS AMOUNT OF SALES AND USE TAX RECEIPTS COLLECTED UNDER THE PROVISIONS OF THIS ARTICLE 26 FOR THE TAXES

1 IMPOSED PURSUANT TO SECTIONS 39-26-106 (1)(c) AND 39-26-202
2 (1)(b.5), LESS A FEE RETAINED BY VENDORS FOR THE COLLECTION AND
3 REMITTANCE OF THE TAX PURSUANT TO SECTION 39-26-105 (1)(f) AND
4 LESS REFUNDS AND ADJUSTMENTS MADE BY THE DEPARTMENT OF
5 REVENUE IN CONJUNCTION WITH ITS COLLECTION AND ENFORCEMENT
6 DUTIES UNDER THIS ARTICLE 26. FOR PURPOSES OF THIS SUBSECTION
7 (1)(a.5), THE FEE RETAINED BY VENDORS AND THE REFUNDS AND
8 ADJUSTMENTS MADE BY THE DEPARTMENT SHALL BE PROPORTIONAL TO
9 THE TAX LEVIED PURSUANT TO SECTIONS 39-26-106 (1)(c) AND 39-26-202
10 (1)(b.5).
11 (6) NET REVENUE FROM THE SALES AND USE TAX ON ALCOHOL
12 BEVERAGES SHALL BE CREDITED TO THE OLD AGE PENSION FUND CREATED
13 IN SECTION 1 OF ARTICLE XXIV OF THE STATE CONSTITUTION IN
14 ACCORDANCE WITH SECTION 2 (a) AND (f) OF ARTICLE XXIV OF THE
15 STATE CONSTITUTION. AN AMOUNT EQUAL TO THE AMOUNT CREDITED TO
16 THE OLD AGE PENSION FUND PURSUANT TO THIS SUBSECTION (6) SHALL BE
17 APPROPRIATED FROM THE STATE GENERAL FUND TO THE CHILDREN'S BASIC
18 HEALTH PLAN TRUST CREATED IN SECTION 25.5-8-105. THE
19 APPROPRIATIONS TO THE CHILDREN'S BASIC HEALTH PLAN TRUST FROM THE
20 GENERAL FUND PURSUANT TO THIS SUBSECTION (6) ARE EXEMPT FROM THE
21 LIMITATION ON THE LEVEL OF STATE GENERAL FUND APPROPRIATIONS SET
22 FORTH IN SECTION 24-75-201.1 (1)(a)(II), PURSUANT TO SECTION
23 24-75-201.1 (1)(a)(III)(C).
24 **SECTION 8.** In Colorado Revised Statutes, 39-26-202, **add**
25 (1)(b.5) as follows:
26 **39-26-202. Authorization of tax.** (1) (b.5) (I) ON AND AFTER
27 JULY 1, 2009, THERE IS IMPOSED AND SHALL BE COLLECTED FROM EVERY
28 PERSON IN THIS STATE A TAX OR EXCISE AT THE RATE OF TWO PERCENT OF

1 STORAGE OR ACQUISITION CHARGES OR COSTS FOR THE PRIVILEGE OF
2 STORING, USING, OR CONSUMING IN THIS STATE ANY ALCOHOL BEVERAGES
3 PURCHASED AT RETAIL. THE TAX SET FORTH IN THIS SUBSECTION (1)(b.5)
4 IS IN ADDITION TO THE TAX SET FORTH IN SUBSECTION (1)(b) OF THIS
5 SECTION AND IS A TAX RATE INCREASE OF THE STATE USE TAX FOR
6 PURPOSES OF SECTION 20 (4)(a) OF ARTICLE X OF THE STATE
7 CONSTITUTION.
8 (II) THE TAX CREATED PURSUANT TO THIS SUBSECTION (1)(b.5)
9 SHALL BE REDUCED BY AN AMOUNT EQUAL TO ANY INCREASE IN THE SALES
10 TAX THAT IS IMPOSED ON THE SALE OF ALCOHOL BEVERAGES THAT IS
11 APPROVED BY THE VOTERS OF THIS STATE ON OR AFTER JULY 1, 2009.
12 **SECTION 9.** In Colorado Revised Statutes, 39-26-204, **add** (6)
13 as follows:
14 **39-26-204. Periodic return - collection.** (6) ANY PAYMENT FOR
15 THE TAX SET FORTH IN SECTION 39-26-202 (1)(b.5) SHALL BE MADE IN THE
16 SAME MANNER AS ANY OTHER PAYMENT TO THE EXECUTIVE DIRECTOR OF
17 THE DEPARTMENT OF REVENUE THAT IS REQUIRED PURSUANT TO THIS PART
18 2; EXCEPT THAT THE EXECUTIVE DIRECTOR SHALL BE NOTIFIED OF THE
19 AMOUNT THAT IS BEING PAID PURSUANT TO SUCH SECTION.
20 **SECTION 10. Refer to people under referendum.** At the
21 election held on November 3, 2016, the secretary of state shall submit this
22 act by its ballot title to the registered electors of the state for their
23 approval or rejection. Each elector voting at the election may cast a vote
24 either "Yes/For" or "No/Against" on the following ballot title: "Shall state
25 taxes be increased _____ dollars annually through increase in the state
26 sales and use tax on retail sales of alcohol beverages to provide funding
27 for the children's basic health plan, and, in connection therewith,
28 increasing by two percent the rate of the sales and use tax on alcohol

1 beverages sold or purchased at retail; reducing the new tax by an amount
2 equal to any future increase in the sales and use tax rate on alcohol
3 beverages; exempting the tax from the total limit on sales and use tax that
4 may be levied; and requiring the net revenue from the tax to be credited
5 to the children's basic health plan trust via the old age pension fund and
6 the state general fund?" Except as otherwise provided in section
7 1-40-123, Colorado Revised Statutes, if a majority of the electors voting
8 on the ballot title vote "Yes/For", then the act will become part of the
9 Colorado Revised Statutes.

Concurrent Resolution for Amending the State Constitution

SENATE CONCURRENT RESOLUTION 04-001

101 **SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF**
102 **COLORADO AN AMENDMENT TO THE COLORADO CONSTITUTION**
103 **CONCERNING THE EXCLUSION OF TUITION PAID TO PUBLIC**
104 **INSTITUTIONS OF HIGHER EDUCATION FROM THE DEFINITION OF**
105 **"FISCAL YEAR SPENDING", AND, IN CONNECTION THEREWITH,**
106 **LIMITING THE EFFECT OF THE EXCLUSION ON STATE FISCAL YEAR**
107 **SPENDING LIMITS BY REQUIRING SUCH LIMITS TO BE**
108 **CALCULATED BASED UPON PRIOR STATE FISCAL YEAR SPENDING**
109 **LIMITS, WITH ADJUSTMENTS FOR INFLATION AND POPULATION**
110 **GROWTH, WITHOUT BEING SUBJECT TO REDUCTION DUE TO**
111 **DECLINES IN STATE REVENUES.**

Resolution Summary

For district fiscal years commencing on or after July 1, 2004, the concurrent resolution excludes tuition paid to public institutions of higher education from fiscal year spending for purposes of the taxpayer's bill of rights. The concurrent resolution requires spending limits for state fiscal years that commence on or after July 1, 2004, to be calculated based upon calculated prior fiscal year spending limits, with adjustments for inflation and population growth, without being subject to reduction due to declines in state revenues.

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1 *Be It Resolved by the Senate of the Sixty-fourth General Assembly*
2 *of the State of Colorado, the House of Representatives concurring herein:*
3 **SECTION 1.** At the election held on November 4, 2004, the
4 secretary of state shall submit to the registered electors of the state the
5 ballot title set forth in section 2 for the following amendment to the state
6 constitution:

In the constitution of the state of Colorado, section 20 of article X, **amend** (2)(e) and (7)(a) as follows:

Section 20. The Taxpayer's Bill of Rights. (2) **Term definitions.** Within this section:

(e) (i) FOR DISTRICT FISCAL YEARS THAT COMMENCE BEFORE JULY 1, 2004, "fiscal year spending" means all district expenditures and reserve increases except, as to both, those for refunds made in the current or next fiscal year or those from gifts, federal funds, collections for another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards, or property sales.

[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 the exclusion of tuition paid to public institutions of higher education from the definition of "fiscal year spending", and, in connection therewith, limiting the effect of the exclusion on state fiscal year spending limits by requiring such limits to be calculated based upon prior state fiscal year spending limits, with adjustments for inflation and population growth, without being subject to reduction due to declines in state revenues?"

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.

Concurrent Resolution Amending the State Constitution and Containing a Nonconstitutional Legislative Declaration

HOUSE CONCURRENT RESOLUTION 04-1005

101 **SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF**
102 **COLORADO AN AMENDMENT TO THE COLORADO CONSTITUTION,**
103 **CONCERNING REFORM OF THE STATE CIVIL SERVICE SYSTEM,**
104 **AND, IN CONNECTION THEREWITH, MODIFYING THE MERIT**
105 **PRINCIPLE, EXEMPTING CERTAIN POSITIONS FROM THE SYSTEM,**
106 **MODIFYING THE NUMBER OF ELIGIBLE APPLICANTS FROM WHICH**
107 **AN APPOINTMENT IS TO BE MADE, MODIFYING THE RESIDENCY**
108 **REQUIREMENT, EXPANDING THE DURATION OF TEMPORARY**
109 **EMPLOYMENT, SPECIFYING THE RULE-MAKING AUTHORITY OF**
110 **THE STATE PERSONNEL BOARD AND THE STATE PERSONNEL**
111 **DIRECTOR, AUTHORIZING A MODIFICATION TO THE VETERANS'**
112 **PREFERENCE CALCULATION, REPEALING THE REQUIREMENT**
113 **THAT THE STATE AUDITOR'S STAFF BE INCLUDED IN THE STATE**
114 **PERSONNEL SYSTEM, AND MAKING CONFORMING AMENDMENTS.**

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.]

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1 WHEREAS, The clauses appearing before Section 1 of this
2 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:

1 **Section 13. Personnel system of state - merit system.**
2 (1) Appointments and promotions to offices and employments in the
3 STATE personnel system ~~of the state~~ shall be made according to merit, ~~and~~
4 ~~fitness~~ to be ascertained by ~~competitive tests of competence~~ COMPARATIVE
5 ASSESSMENTS OF QUALIFICATIONS AS PROVIDED BY LAW, without regard
6 to race, creed, ~~or~~ color, SEX, or political affiliation.
7 (2) The personnel system of the state shall comprise all appointive
8 public officers and employees of the state, except the following: ~~Members~~
9 ~~of the public utilities commission, the industrial commission of Colorado,~~
10 ~~the state board of land commissioners, the Colorado tax commission, the~~
11 ~~state parole board, and the state personnel board~~ HEADS OF PRINCIPAL
12 DEPARTMENTS; members of any board or commission; ~~serving without~~
13 ~~compensation except for per diem allowances provided by law and~~
14 ~~reimbursement of expenses; the~~ employees in the offices of the governor
15 and the lieutenant governor AND NOT MORE THAN FOUR EMPLOYEES IN THE
16 OFFICES OF THE HEADS OF PRINCIPAL DEPARTMENTS, ALL OF whose
17 functions are confined to such offices...

[Note: The remainder of this concurrent resolution has been removed from this illustration.]

Concurrent Resolution to Ratify an Amendment to the U.S. Constitution

HOUSE CONCURRENT RESOLUTION 72-1017

101 **CONCERNING RATIFICATION OF THE PROPOSED AMENDMENT TO THE**
102 **CONSTITUTION OF THE UNITED STATES RELATIVE TO EQUAL**
103 **RIGHTS FOR MEN AND WOMEN.**

Resolution Summary

The concurrent resolution ratifies the proposed equal rights amendment to the U.S. constitution.

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1 WHEREAS, the Ninety-second Congress of the United States of
2 America, at its second session, in both Houses, by a constitutional
3 majority of two-thirds thereof, has proposed an amendment to the
4 Constitution of the United States of America in the following words, to
5 wit:

6 JOINT RESOLUTION

7 Proposing an amendment to the Constitution of the United States
8 relative to equal rights for men and women.

9 *Resolved by the Senate and House of Representatives of the United*
10 *States of America in Congress assembled (two-thirds of each House*
11 *concurring therein),* That the following article is proposed as an
12 amendment to the Constitution of the United States, which shall be valid
13 to all intents and purposes as part of the Constitution when ratified by the
14 legislatures of three fourths of the several states within seven years from
15 the date of its submission by Congress:

16 "ARTICLE

17 "Section 1. Equality of rights under the law shall not be denied or

1 abridged by the United States or by any state on account of sex.
2 "Section 2. The congress shall have the power to enforce, by
3 appropriate legislation, the provisions of this article.
4 "Section 3. This amendment shall take effect two years after the
5 date of ratification."
6 *Be It Resolved by the House of Representatives of the Forty-eighth*
7 *General Assembly of the State of Colorado, the Senate concurring herein:*
8 That the said proposed amendment to the Constitution of the
9 United States of America be and the same is hereby ratified by the General
10 Assembly of the State of Colorado.
11 *Be It Further Resolved*, That a copy of the foregoing preamble and
12 resolution be transmitted to the Administrator of General Services of the
13 United States, which copy shall be certified by the President of the Senate,
14 attested by the Secretary of the Senate, and certified by the Speaker of the
15 House of Representatives, attested by the Chief Clerk of the House of
16 Representatives, of the Forty-eighth General Assembly of the State of
17 Colorado.

Concurrent Resolution to Call a State Constitutional Convention

HOUSE CONCURRENT RESOLUTION 04-1002

101 **SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF**
102 **COLORADO THE PROPOSAL FOR THE HOLDING OF A**
103 **CONSTITUTIONAL CONVENTION TO REVISE, ALTER, AND AMEND**
104 **SECTION 17 OF ARTICLE IX AND SECTIONS 3, 3.5, AND 20 OF**
105 **ARTICLE X OF THE CONSTITUTION OF THE STATE OF COLORADO,**
106 **WITH ANY REFERRED MEASURE FROM THE CONVENTION**
107 **REQUIRING THE VOTE OF TWO-THIRDS OF THE DELEGATES**
108 **THERETO.**

Resolution Summary

The concurrent resolution submits, at the next general election, the proposal of holding a convention to amend specified provisions of the state constitution, with any referred measure from the convention requiring the vote of 2/3 of the delegates thereto.

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1 *Be It Resolved by the House of Representatives of the Sixty-fourth*
2 *General Assembly of the State of Colorado, the Senate concurring herein:*
3 **SECTION 1.** At the election held on November 4, 2004, the
4 secretary of state shall submit to the registered electors of the state, for
5 their approval or rejection, the proposal of holding a convention to revise,
6 alter, and amend section 17 of article IX and sections 3, 3.5, and 20 of
7 article X of the present constitution of the state of Colorado, with any
8 referred measure from the convention requiring the vote of two-thirds of
9 the delegates thereto.
10 **SECTION 2.** The submission of said proposal shall be duly
11 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: "Shall there be a constitutional convention to revise, alter, and amend section 17 of article IX and sections 3, 3.5, and 20 of article X of 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.

NOTE: *The general rule is to not refer to specific sections or articles of the Colorado constitution in a ballot title question; however, because the scope of a constitutional convention is often an issue of concern, it is recommended that the actual citations be listed in a resolution calling for a constitutional convention.*

Concurrent Resolution Contingent on the Passage of Another Concurrent Resolution

SENATE CONCURRENT RESOLUTION 04-009

101 **SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF**
102 **COLORADO AN AMENDMENT TO THE COLORADO CONSTITUTION**
103 **CONCERNING MODIFICATIONS TO THE REQUIRED INCREASES IN**
104 **CERTAIN STATE EDUCATION FUNDING, AND, IN CONNECTION**
105 **THEREWITH, REQUIRING THE STATEWIDE BASE PER PUPIL**
106 **FUNDING AND THE TOTAL STATE FUNDING FOR ALL**
107 **CATEGORICAL PROGRAMS TO ANNUALLY INCREASE BY THE**
108 **LESSER OF INFLATION OR THE PERCENTAGE CHANGE IN GENERAL**
109 **FUND REVENUES, AND REQUIRING AN ADDITIONAL ONE PERCENT**
110 **INCREASE IN THE STATEWIDE BASE PER PUPIL FUNDING AND**
111 **TOTAL STATE FUNDING FOR ALL CATEGORICAL PROGRAMS WHEN**
112 **STATE REVENUES EXCEED THE LIMITATION ON STATE FISCAL**
113 **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.
- 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.

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

101 **THAT THE GENERAL ASSEMBLY SET THE STATEWIDE BASE PER**
102 **PUPIL FUNDING AND TOTAL STATE FUNDING FOR ALL**
103 **CATEGORICAL PROGRAMS AT NO LESS THAN THE LEVELS OF THE**
104 **STATEWIDE BASE PER PUPIL FUNDING FOR PRESCHOOL, PRIMARY,**
105 **AND SECONDARY EDUCATION AND TOTAL STATE FUNDING FOR**
106 **ALL CATEGORICAL PROGRAMS FOR THE PRIOR FISCAL YEAR;**
107 **INCREASING THE STATE FISCAL YEAR SPENDING LIMITS FOR THE**
108 **2005-06 AND 2006-07 STATE FISCAL YEARS BY ONE PERCENTAGE**
109 **POINT EACH; INCLUDING EACH ONE PERCENTAGE POINT**
110 **INCREASE IN THE STATE FISCAL YEAR SPENDING BASE FOR THE**
111 **PURPOSE OF CALCULATING SUBSEQUENT YEARS' STATE FISCAL**
112 **YEAR SPENDING LIMITS EVEN IF STATE REVENUES DECLINE; AND**
113 **REQUIRING SOME OF THE ADDITIONAL MONEY UNDER THE**
114 **INCREASED STATE FISCAL YEAR SPENDING LIMITS TO BE**
115 **EXPENDED FIRST TO COMPENSATE LOCAL GOVERNMENTS FOR**
116 **REVENUE LOSSES FROM THE SENIOR PROPERTY TAX EXEMPTION,**
117 **NEXT TO PROVIDE A STATE CREDIT AGAINST BUSINESS PERSONAL**
118 **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

1 programs for the prior state fiscal year in any state fiscal year that follows
2 a calendar year in which state general fund revenues did not increase by
3 at least the sum of inflation plus the percentage change in state population
4 for the prior calendar year; replacing the requirement that statewide base
5 per pupil funding for preschool, primary, and secondary education and
6 total state funding for all categorical programs for state fiscal years
7 starting with the 2011-12 state fiscal year increase by the rate of inflation
8 with a requirement that the general assembly set the statewide base per
9 pupil funding and total state funding for all categorical programs at no less
10 than the levels of the statewide base per pupil funding for preschool,
11 primary, and secondary education and total state funding for all
12 categorical programs for the prior fiscal year; increasing the state fiscal
13 year spending limits for the 2005-06 and 2006-07 state fiscal years by one
14 percentage point each; including each one percentage point increase in the
15 state fiscal year spending base for the purpose of calculating subsequent
16 years' state fiscal year spending limits even if state revenues decline; and
17 requiring some of the additional money under the increased state fiscal
18 year spending limits to be expended first to compensate local governments
19 for revenue losses from the senior property tax exemption, next to provide
20 a state credit against business personal property taxes, and lastly for
21 refunds to taxpayers?"
22 **SECTION 3.** Except as otherwise provided in section 1-40-123,
23 Colorado Revised Statutes, if a majority of the electors voting on the
24 ballot title vote "Yes/For", then the amendment will become part of the
25 state constitution.

Joint Resolution Asking Congress to Submit an Amendment to the U.S. Constitution

HOUSE JOINT RESOLUTION 92-1026

101 CONCERNING AN AMENDMENT TO THE UNITED STATES CONSTITUTION

102 REQUIRING CONGRESS TO ADOPT A BALANCED BUDGET PLAN.

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1 WHEREAS, The national debt is over $3.7 trillion and is
2 increasing at a rate of over $1 billion a day; and

3 WHEREAS, The United States Congress made changes in the
4 budget process at least four times in the last two decades and each time the
5 deficit increased; and

6 WHEREAS, The Gramm-Rudman-Hollings Deficit Reduction Act
7 of 1985 set decreasing deficit targets to balance the budget by 1991, but
8 since Congress was unable to meet the deadline it has delayed the date to
9 1993; and

10 WHEREAS, The five-year 1990 deficit reduction "summit" only
11 resulted in tax increases and increased federal deficits; and

12 WHEREAS, The interest on the national debt is fifteen percent of
13 the federal budget costing taxpayers over $225 billion a year; and

14 WHEREAS, Budgeting developments have increased spending as
15 a percent of the gross national product which has resulted in an increased
16 tax burden and an increase in the national debt; and

17 WHEREAS, Increasing federal debt expands the public sector at
18 the expense of the private economy and causes inflation, unemployment,
19 high interest rates, and an unstable economy which places greater burdens
20 on state governments and budgets; and

21 WHEREAS, Tax increases destroy the will of the people to work
22 and prosper and destroy the incentive for business and industry to invest
23 and expand; and

24 WHEREAS, Congress has considered various balanced budget
25 proposals in the past without success and is currently considering
26 proposals which do not contain the measures necessary to halt excessive
27 spending and mounting tax burdens; now, therefore,

28 *Be It Resolved by the House of Representatives of the Fifty-eighth*
29 *General Assembly of the State of Colorado, the Senate concurring herein:*

30 (1) That the President and Congress are required to agree each year
31 to a balanced budget plan, prohibiting spending outlays from exceeding

tax receipts.

(2) That Congress may only authorize a deficit with the approval of a three-fifths majority of both the House of Representatives and the Senate.

(3) That Congress may only raise taxes with the approval of a three-fifths majority of the House of Representatives and the Senate.

(4) That congress may not increase the total United States debt without the approval of a three-fifths majority of the House of Representatives and the Senate.

(5) That congress may waive these provisions if a declaration of war is in effect.

(6) second year after ratification, whichever is later.

Be It Further Resolved, That copies of this Joint Resolution be sent to all members of the United States Senate and House of Representatives urging them to support the provisions in HJR 248 to balance the federal budget, limit taxes, and halt the growing national debt which threatens the economic stability of this country.

Joint Memorial Asking Congress to Call a Federal Constitutional Convention

SENATE JOINT MEMORIAL 78-001

101 **MEMORIALIZING CONGRESS TO CONVENE A CONSTITUTIONAL**
102 **CONVENTION FOR THE SPECIFIC AND EXCLUSIVE PURPOSE OF**
103 **PROPOSING AN AMENDMENT TO THE UNITED STATES**
104 **CONSTITUTION REQUIRING THAT FEDERAL SPENDING NOT**
105 **EXCEED ESTIMATED FEDERAL REVENUES.**

---

1 WHEREAS, With each passing year this nation becomes more
2 deeply in debt as its expenditures grossly and repeatedly exceed available
3 revenues so that the public debt now exceeds hundreds of billions of
4 dollars; and

5 WHEREAS, The annual federal budget continually demonstrates
6 an unwillingness or inability of both the legislative and executive branches
7 of the federal government to curtail spending to conform to available
8 revenues; and

9 WHEREAS, Convinced that fiscal irresponsibility at the federal
10 level, with the inflation which results from this policy, is the greatest
11 threat which faces our nation, we firmly believe that constitutional
12 restraint is vital to bring the fiscal discipline needed to restore financial
13 responsibility; and

14 WHEREAS, Under article V of the constitution of the United
15 States, amendments to the federal constitution may be proposed by the
16 congress whenever two-thirds of both houses deem it necessary or on the
17 application of the legislatures of two-thirds of the several states that the
18 congress shall call a constitutional convention for the purpose of
19 proposing amendments which shall be valid to all intents and purposes
20 when ratified by the legislatures and three-fourths of the several states;
21 now, therefore,

22 *Be It Resolved by the Senate of the Fifty-first General Assembly of*
23 *the State of Colorado, the House of Representatives concurring herein:*

24 That the Congress of the United States is hereby memorialized to
25 call a constitutional convention pursuant to article V of the constitution of
26 the United States for the specific and exclusive purpose of proposing an
27 amendment to the federal constitution prohibiting deficit spending except
28 under conditions specified in such amendment.

29 *Be It Further Resolved,* That this application and request be
30 deemed null and void, rescinded, and of no effect in the event that such

1 convention not be limited to such specific and exclusive purpose.

2 *Be It Further Resolved,* That copies of this Memorial be
3 transmitted to the secretary of state and presiding officers of both houses
4 of the legislatures of each of the several states of the union, the clerk of
5 the United States house of representatives, the secretary of the United
6 States senate, and to each member of the Colorado congressional
7 delegation.

Joint Resolution to Amend the Joint Rules

SENATE JOINT RESOLUTION 99-019

101 **CONCERNING CHANGES TO LEGISLATIVE DEADLINES.**

Be It Resolved by the Senate of the Sixty-second General Assembly of the State of Colorado, the House of Representatives concurring herein:

That in the Joint Rules of the Senate and the House of Representatives, Joint Rule No. 23, **add** (a)(1.2) as follows:

23. DEADLINE SCHEDULE

(a) (1.2) NOTWITHSTANDING THE PRECEDING SUBSECTION (a)(1) OF THIS RULE, FOR THE FIRST REGULAR SESSION IN 1999 ONLY, THE FOLLOWING DEADLINES ARE CHANGED TO THE DATES INDICATED:

1. THE FRIDAY, MARCH 19 DEADLINE (THE 73RD LEGISLATIVE DAY) FOR COMMITTEES OF REFERENCE TO REPORT BILLS ORIGINATING IN THE OTHER HOUSE IS EXTENDED IN THE SENATE UNTIL TUESDAY, MARCH 23, 1999 (THE 77TH LEGISLATIVE DAY);

2. THE MONDAY, MARCH 22 DEADLINE (THE 76TH LEGISLATIVE DAY) FOR INTRODUCTION OF THE LONG APPROPRIATION BILL IN THE HOUSE OF ORIGIN (THE SENATE) IS EXTENDED UNTIL WEDNESDAY, MARCH 24, 1999 (THE 78TH LEGISLATIVE DAY);

3. THE FRIDAY, MARCH 26 DEADLINE (THE 80TH LEGISLATIVE DAY) FOR FINAL PASSAGE OF THE LONG APPROPRIATION BILL IN THE HOUSE OF ORIGIN (THE SENATE) IS EXTENDED UNTIL MONDAY, MARCH 29, 1999 (THE 83RD LEGISLATIVE DAY);

4. THE FRIDAY, APRIL 2 DEADLINE (THE 87TH LEGISLATIVE DAY) FOR FINAL PASSAGE OF THE LONG APPROPRIATION BILL IN THE SECOND HOUSE (THE HOUSE) IS EXTENDED UNTIL MONDAY, APRIL 5, 1999 (THE 90TH LEGISLATIVE DAY).

THIS SUBSECTION (a)(1.2) IS REPEALED, EFFECTIVE MAY 6, 1999.

Joint Resolution Expressing Congratulations, Opinion, Etc.

HOUSE JOINT RESOLUTION 99-1044

101 CONCERNING THE ENCOURAGEMENT OF VOLUNTARY EFFORTS TO
102 ALLEVIATE CONGESTION ON COLORADO HIGHWAYS.

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1 WHEREAS, The state of Colorado contains more than 85,000
2 miles of roads and 8,300 bridges, and vehicle miles in Colorado last year
3 totaled more than 36 billion, 22 billion of such miles on state roads; and

4 WHEREAS, Nearly three-fourths of Colorado's portion of the
5 interstate highway system was built before 1970, and since then, the
6 population of this state has increased by 1.8 million people; and

7 WHEREAS, Insufficient investment in the state's transportation
8 system relative to the state's population growth has resulted in too many
9 congested and unsafe roads, with heavily-traveled portions of such roads
10 forced to handle thousands more daily trips by motorists than was
11 anticipated when such roads were constructed; and

12 WHEREAS, Although the Colorado Transportation Commission
13 has identified 28 strategic transportation projects across the state that are
14 critical for improving Coloradans' safety and mobility, the projected
15 completion date for all of these projects is literally a generation away; and

16 WHEREAS, Beneficial growth in Colorado's economy and
17 preservation of our state's unique quality of life will only be possible if
18 goods, services, and people can be moved quickly, efficiently, and
19 economically across our state; and

20 WHEREAS, Addressing the state's transportation crisis is a major
21 priority of the First Regular Session of the Sixty-second General
22 Assembly, and Governor Owens' administration, working in concert with
23 the General Assembly, has developed a comprehensive package of
24 legislative measures that will, if enacted, accelerate completion of the 28
25 state-wide strategic transportation projects, provide safer and less
26 congested highways, direct attention to needed improvements in the
27 southeast corridor while freeing up resources for other important projects
28 around the state, and save Colorado taxpayers money and time otherwise
29 lost to traffic congestion; and

30 WHEREAS, There are numerous actions Colorado public and
31 private employers, families, and citizens can take now on a voluntary basis
32 to relieve or reduce traffic congestion on the state highways that will
33 enhance and supplement the package of transportation measures currently
34 pending before the General Assembly, including the adoption and
35 encouragement of flex-time, home-office, telecommuting, and
36 ride-sharing arrangements, as well as the use of "jitney" taxicab services
37 in heavily congested areas; and

WHEREAS, Voluntary efforts on the part of Colorado public and private employers, families, and citizens to make greater use of these or other alternatives to traditional highway usage could make a meaningful difference in reducing or relieving congestion on state roads at little or no cost to the public; now, therefore,

Be It Resolved by the House of Representatives of the Sixty-second General Assembly of the State of Colorado, the Senate concurring herein:

(1) That the General Assembly encourages Colorado public and private employers, families, and individual citizens to adopt and practice voluntary efforts, whether through flex-time, home-office, telecommuting, ride-sharing, jitney taxicab service, or other arrangements, that will reduce or relieve traffic congestion on state roads.

(2) That the General Assembly encourages the executive director of each principal department of the executive branch to consider, to the extent not yet undertaken, the adoption of policies that will foster the use of voluntary efforts to reduce traffic congestion on the part of the employees in that department, consistent with existing rules and regulations concerning personnel matters or otherwise.

Be It Further Resolved, That copies of this Joint Resolution be sent to Governor Bill Owens, the executive director of each principal department of the executive branch of state government, and each member of Colorado's delegation to the United States Congress.

Joint Resolution on the Death of Someone Not a Member of the General Assembly

SENATE JOINT RESOLUTION 99-038

101 **CONCERNING HONORING DARIES CHARLES "CHUCK" LILE.**

WHEREAS, By the Will of Divine Providence, Daries Charles "Chuck" Lile, the former Director of the Colorado Water Conservation Board, departed this life on February 8, 1999, at the age of fifty-four; and *[traditional version]*

WHEREAS, Daries Charles "Chuck" Lile, the former Director of the Colorado Water Conservation Board, departed this life on February 8, 1999, at the age of fifty-four; and *[alternate modern version]*

WHEREAS, Chuck Lile served the State of Colorado faithfully for thirty-one years in the area of water resources; and

WHEREAS, Chuck Lile, a registered professional engineer, began his water resources career in July of 1967 in the Office of the State Engineer where he worked for twenty-five years; and

WHEREAS, Chuck Lile was the division engineer of Water District 7 in Durango for fourteen of his twenty-five years with the Office of the State Engineer, where he was instrumental in negotiating the Indian Reserved Water Rights settlement; and

WHEREAS, Chuck Lile was made the Director of the Colorado Water Conservation Board in 1992 where his insight and leadership skills greatly benefitted the Colorado Water Conservation Board and, consequently, the State of Colorado; and

WHEREAS, Chuck Lile, during his tenure as the Director of the Colorado Water Conservation Board, improved and brought new vitality to the Colorado Water Conservation Board loan program by creating several new accounts within the Colorado Water Conservation Board Construction Fund, such as the fish and wildlife resources account, the emergency infrastructure repair account, and the Horse Creek Basin augmentation account; and

WHEREAS, Chuck Lile, in response to the Kansas lawsuit against Colorado claiming failure to deliver water to the state line as required by the Arkansas River Compact, helped organize and co-chaired the Arkansas River Coordinating Committee; and

WHEREAS, Chuck Lile served on several state and interstate organizations including the Arkansas River Compact Administration, the Upper Colorado River Compact Commission as alternate commissioner, the Western States Water Council, the Colorado River Salinity Control Forum, and the Colorado Groundwater Commission; and

WHEREAS, Chuck Lile concluded his official career in July of 1998 after serving nearly six years as the Director of the Colorado Water Conservation Board; and

WHEREAS, Chuck Lile was also very involved in community projects, including such organizations as the Rotary Club, running clubs, school boards, church groups, and youth sports, all of which demonstrated his deep and abiding affection for Colorado and its people; and

WHEREAS, Chuck Lile spent his entire professional career working for water users in the State of Colorado and now his memory deserves their gratitude and deep appreciation for his skill, insight, and leadership; now, therefore,

Be It Resolved by the Senate of the Sixty-second General Assembly of the State of Colorado, the House of Representatives concurring herein:

That, in the death of Daries Charles "Chuck" Lile, the people of the State of Colorado have lost a devoted public servant and an outstanding citizen and that we, the members of the Sixty-second General Assembly, pay tribute to Chuck Lile for his years of dedicated public service and do hereby extend our deep and heartfelt sympathy to the members of his family.

Be It Further Resolved, That copies of this resolution be sent to Chuck Lile's wife, Leesa Lile, his sons Chip Lile and Chris Lile, his daughter Carrie Lile, all of Durango, Colorado, and his mother Merle Lile, of Pueblo, Colorado.

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 HR 81-1016, Session Laws of Colorado 1981, p. 2126

SENATE JOINT RESOLUTION 99-021

101 **CONCERNING A REQUEST TO THE SUPREME COURT OF THE STATE OF**
102 **COLORADO TO RENDER ITS OPINION UPON QUESTIONS**
103 **REGARDING HOUSE BILL 99-1325.**

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1 WHEREAS, Population and economic growth in Colorado
2 increasingly burden existing public highways and other transportation
3 infrastructure in the state, and this burden grows progressively greater
4 each year; and

5 WHEREAS, The state's transportation infrastructure must be
6 significantly improved in the near future to maintain the quality of life for
7 the citizens of the state and to allow the state's economy to continue to
8 grow and prosper; and

9 WHEREAS, House Bill 99-1325 was introduced in the House of
10 Representatives of the Sixty-second General Assembly to enable the state
11 to effectively and economically provide for the state's transportation
12 infrastructure needs through the issuance of transportation revenue
13 anticipation notes to finance federal aid transportation projects; and

14 WHEREAS, House Bill 99-1325 was passed by the House of
15 Representatives, was passed by the Senate on Second Reading, and now
16 awaits final action by the Senate; and

17 WHEREAS, Substantial questions have been raised about the
18 constitutionality of House Bill 99-1325 under section 20 of article X and
19 section 3 of article XI of the state constitution; and

20 WHEREAS, If the state must delay issuance of transportation
21 revenue anticipation notes due to prolonged legal proceedings to
22 determine whether the provisions of House Bill 99-1325 are
23 constitutional, the state's ability to adequately address the long-term
24 transportation infrastructure needs of the state will be seriously impaired
25 for the following reasons:

26 1. The state would not be able to realize significant cost savings
27 from financing federal aid transportation projects with transportation
28 revenue anticipation notes because such transportation projects would not
29 be completed at present-day costs and at an accelerated pace; and

30 2. The state must immediately begin negotiations with the federal
31 government in order to be eligible to receive federal transportation funds

recently made available by the United States Congress but not yet awarded; however, the federal government will not enter into such negotiations with the state until House Bill 99-1325 becomes law and is determined to be constitutional; and

3. Any delay in these negotiations with the federal government will place the state at a significant disadvantage with respect to other states already competing for these federal transportation funds, and such delay may result in the state being unable to obtain any of these federal funds; and

4. The state may be unable to issue transportation revenue anticipation notes or may be able to issue such notes only at inordinate cost until questions regarding the constitutionality of House Bill 99-1325 are resolved by a decision of the Supreme Court of the State of Colorado; and

WHEREAS, If proceeds from the sale of transportation revenue anticipation notes are not treated the same as bonded debt proceeds and excluded from fiscal year spending for purposes of section 20 of article X of the state constitution, this manner of financing state transportation projects would only increase the amount of revenues in excess of the state's constitutional spending limitation that would be refunded using state general fund revenues at the expense of other state programs; and

WHEREAS, Resolving the constitutional questions in the context of an interrogatory proceeding will avoid:

1. Incurring the costs associated with the issuance of such notes, if such notes are later declared unconstitutional; and

2. Jeopardizing the funding for other important state programs and incurring penalties for noncompliance with section 20 of article X of the state constitution, if the proceeds from transportation revenue anticipation notes are later determined to be included in state fiscal year spending; and

WHEREAS, The issues raised by House Bill 99-1325 are strictly legal issues involving the interpretation and construction of various provisions of the state constitution, and no factual issues are likely to arise in the context of a private suit that would enhance the Supreme Court's ability to adjudicate these issues; and

WHEREAS, If, prior to the adjournment sine die of the Sixty-second General Assembly on May 5, 1999, the Supreme Court determines that the provisions of House Bill 99-1325 do not violate the state constitution, House Bill 99-1325 will probably pass the Senate on Third Reading and be signed into law by the Governor; and

WHEREAS, The General Assembly has elected to submit these interrogatories by joint resolution of the two houses signed by the Governor in order to demonstrate to the Supreme Court that both houses and the Governor concur in the importance of the issues set forth below and the urgency of the situation described herein; and

WHEREAS, The submittal of these interrogatories in this manner

in no way limits or modifies the authority of either house to submit interrogatories by a House or Senate resolution; now, therefore,

Be It Resolved by the Senate of the Sixty-second General Assembly of the State of Colorado, the House of Representatives concurring herein:

That, in view of the premises, there is an important question as to the constitutionality of House Bill 99-1325, and it is the judgment of the Senate and the House of Representatives that the question of the constitutionality of House Bill 99-1325 is a matter of extreme importance and public interest; that it is essential that an immediate determination be secured; and that a solemn occasion within the meaning and intent of section 3 of article VI of the state constitution has arisen; and the Senate and the House of Representatives accordingly request the Supreme Court of the state of Colorado to render its opinion upon the following questions:

1. Would transportation revenue anticipation notes issued in accordance with the provisions of House Bill 99-1325 constitute a "debt by loan in any form" that is prohibited by section 3 of article XI of the state constitution?

2. Would transportation revenue anticipation notes issued in accordance with the provisions of House Bill 99-1325 constitute a "multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever" that requires prior voter approval under section 20 (4)(b) of article X of the state constitution?

3. Would the proceeds from the issuance of transportation revenue anticipation notes issued in accordance with the provisions of House Bill 99-1325 be subject to the constitutional limitation on state fiscal year spending imposed by section 20 (7)(a) of article X of the state constitution?

Be It Further Resolved, That the President of the Senate, immediately upon passage of this Resolution and approval by the Governor, shall transmit to the Clerk of the Supreme Court a certified copy thereof and certified copies of Revised House Bill 99-1325, and that the Committee on Legal Services shall be directed to furnish said Court with an adequate number of copies of this Resolution and said bill and shall submit to said Court such further documents and briefs as the Court may require to expedite its procedure in the premises.

Memorial on the Death of a Former Member

HOUSE MEMORIAL 99-1001

101 **MEMORIALIZING FORMER REPRESENTATIVE SANDERS ARNOLD.**

WHEREAS, By the Will of Divine Providence, our beloved former member, Sanders Gibson "Sandy" Arnold, departed this life on March 1, 1999, at the age of 69; and *[traditional version]*

WHEREAS, Our respected former colleague, Sanders Gibson "Sandy" Arnold, a past member of the Colorado House of Representatives, departed this life on March 1, 1999, at the age of 69; and *[alternate modern version]*

WHEREAS, Representative Arnold was born November 26, 1929, in Boulder, Colorado; and

WHEREAS, Representative Arnold graduated from Boulder High School in 1948, attended the University of Denver, and was a graduate of the Ford Merchandising Institute; and

WHEREAS, Representative Arnold, following service in the U.S. Army, joined his father and brothers in the family business of Arnold Brothers Ford in Boulder and Arnold-Brewer Ford in Estes Park; and

WHEREAS, Representative Arnold served his community for many years as director of the United Bank of Boulder, the Longs Peak Council of the Boy Scouts of America, and the Boulder Chamber of Commerce; and

WHEREAS, Representative Arnold was an active member of the March of Dimes, Boulder Pow Wow Rodeo, and the Ford Dealer's Association; and

WHEREAS, Representative Arnold left the family business to run for political office and was elected in 1969 to the Colorado House of Representatives where he served four terms of office; and

WHEREAS, As a member of the House of Representatives, Representative Arnold served on several committees, including the Labor Committee, the Local Government Committee, the Transportation and Highway Committee, the Game, Fish, and Parks Committee, and the joint Budget Committee, and he chaired the Appropriations Committee; and

WHEREAS, Representative Arnold received 14 public awards for his legislative work in the areas of education, mental health, the mentally handicapped, the environment, land use, tax relief, and campaign reform; and

WHEREAS, Representative Arnold sponsored the bill to allow motor vehicles to make right turns on a red light; and

WHEREAS, Representative Arnold was a strong advocate of the University of Colorado and the rights of students and children; and

WHEREAS, Representative Arnold was named "Most Outstanding Legislator" by his peers from both political parties; and

WHEREAS, Representative Arnold was a giant of a man physically and in spirit, known for his booming bass voice, big heart, and ready smile; and

WHEREAS, It is fitting that we, the members of the House of Representatives of the Sixty-second General Assembly, pay tribute to the dedicated service of Representative Sanders Arnold and express our deep regret and sorrow occasioned by his death; now, therefore,

Be It Resolved by the House of Representatives of the Sixty-second General Assembly of the State of Colorado:

That, in the death of Sanders Arnold, the people of the state of Colorado have lost a dedicated public servant and outstanding citizen, and that we, the members of the House of Representatives of the Sixty-second General Assembly, do hereby extend our deep and heartfelt sympathy to the members of his family and pay tribute to a man who served his state well and faithfully; and

Be It Further Resolved, That copies of this Memorial be sent to Representative Arnold's son Sanders Arnold, Jr., his granddaughters Emily and Mary Arnold, his sister Sally A. Streamer, and his brothers William and E.R. "Pat" Arnold.

Joint Memorial to Congress

SENATE JOINT MEMORIAL 99-003

MEMORIALIZING CONGRESS TO ESTABLISH A BLOCK GRANT PROGRAM FOR THE DISTRIBUTION OF FEDERAL HIGHWAY MONEY, TO USE A UNIFORM MEASURE WHEN CONSIDERING THE DONOR AND DONEE ISSUE, TO ELIMINATE DEMONSTRATION PROJECTS, AND TO EXPAND ACTIVITIES TO COMBAT THE EVASION OF FEDERAL HIGHWAY TAXES AND FEES.

WHEREAS, Due to the dynamics of state size, population, and other factors such as federal land ownership and international borders, there is a need for donor states that pay more in federal highway taxes and fees than they receive from the federal government and for donee states that receive more money from the federal government than they pay in federal highway taxes and fees; and

WHEREAS, The existence of such donor and donee states supports the maintenance of a successful nationwide transportation system; and

WHEREAS, There should be a uniform measure when considering the donor and donee issue, and a ratio derived from the total amount of money a state receives divided by the total amount of money that the state collects in federal highway taxes and fees is a clear and understandable measure; and

WHEREAS, Demonstration projects are an ineffective use of federal highway taxes and fees; and

WHEREAS, All money residing in the federal highway trust fund should be returned to the states either for use on the national highway system or nationally uniform highway safety improvement programs or as block grants; and

WHEREAS, The state block grant program should allow states to make the final decisions that affect the funding of their local highway projects based on the statewide planning process; and

WHEREAS, Only a reasonable amount of the money collected from the federal highway taxes and fees should be retained by the United States Department of Transportation for safety and research purposes; and

WHEREAS, States with public land holdings should not be penalized for receiving transportation funding through federal land or national park transportation programs, and such funding should not be

included in the states' allocation of money; and

WHEREAS, The evasion of federal highway taxes and fees further erodes the ability of the state and the federal government to maintain an efficient nationwide transportation system; now, therefore,

Be It Resolved by the Senate of the Sixty-second General Assembly of the State of Colorado, the House of Representatives concurring herein:

(1) That, when considering issues related to donor and donee states, the federal government should adopt a ratio derived from the total amount of money a state receives in federal highway money divided by the total amount of money the state collects in federal highway taxes and fees; and

(2) That all demonstration projects should be eliminated; and

(3) That after federal money has been expended for the national highway system and safety improvements, a state block grant program should be established for the distribution of remaining federal money; and

(4) That it is necessary to expand federal and state activities to combat the evasion of federal highway taxes and fees.

Be It Further Resolved, That copies of this Joint Memorial be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of Colorado's delegation of the United States Congress.

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APPENDIX B
AMENDING CLAUSES

B.1 GENERAL RULES

- You can combine multiple types of provisions in the same C.R.S. section within a single amending clause.
- Amending clauses will always begin with "In Colorado Revised Statutes,", unless you're amending another document.
- You will use "instructions" for what is to happen with the provision being amended, repealed, etc. These instructions will be grouped and appear in a certain order, which is outlined below.
- Instruction words, such as "amend", "repeal", "add", etc., will appear in bold.
- The type of provision you're working with (a part, article, section, subsection, etc.) will dictate where the bold instruction word goes — either before the listed provision or after.
- 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)).
- At the end of the clause, use "as follows:", unless it's a straight repeal.
- 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:*
- In some instances, you can combine two or more sections, parts, or articles in one amending clause. When adding two or more sections, parts, or articles, 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.1.1 Order of Clause Instructions

This is the order of instructions when combining multiple provisions (subsection or smaller) in a single amending clause.

NOTE: Straight repeals and the repeal of provisions being relocated or not being relocated can't be combined with other instructions.

1st 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 #].
2nd 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 #].
3rd Add	Includes the following types of instructions that add provisions: Add; add with relocated provisions; add with amended and relocated provisions.
4th RC & RE	

B.2 STATUTORY CLAUSES

In Colorado Revised Statutes, 37-87-102, **amend** (2)(b), (2)(c), (3), and (5); and **add** (4)(h) as follows:

1. Begin with "In Colorado Revised Statutes,".

2. If you're amending a provision smaller than a section, list the section number next. If amending a section or larger, list the instruction first. Indicate in bold what you're doing to the provision. These "instructions" should be separated by semicolons from additional instructions and should appear in the appropriate order (see section B.1.1 "Order of Clause Instructions" above).

3. Do not place a space between each provision in parentheses.

4. End the clause with "as follows", unless it will be a straight repeal.

Statutes*

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
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

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 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
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 parts)	Yes, but parts must be in same article	Yes, but articles must be in same title
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

* 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.

B.3 AMENDING EXISTING LAW

B.3.1 To Amend a Section

SECTION 1. In Colorado Revised Statutes, **amend** 18-1-408 as follows:

B.3.2 To Amend an Introductory Portion

SECTION 2. In Colorado Revised Statutes, 6-1-1103, **amend** the introductory portion as follows:

SECTION 3. In Colorado Revised Statutes, 29-4-710.5, **amend** (1) introductory portion as follows:

B.3.3 To Amend an Introductory Portion and a Section Division

SECTION 4. In Colorado Revised Statutes, 1-9-203, **amend** (2) introductory portion and (5)(b) as follows:

SECTION 5. In Colorado Revised Statutes, 18-1-408, **amend** (1), (2), (5) introductory portion, and (6) as follows:

B.3.4 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.3.5 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.3.6 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.4 AMENDING AN ENTIRE PROVISION - DELETED BY AMENDMENT

Whenever changing an entire provision (section, subsection, paragraph, etc.), 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 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), (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".

B.5 REPEALING EXISTING LAW

B.5.1 General Repeal Clauses

B.5.1.1 User-friendly Repeals

For a user-friendly repeal, the text of the provision is shown in strike type.

B.5.1.1.1 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. Under this type of clause ("repealed as follows:"), no other amendments can be shown to other provisions of the section.

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 subsection, paragraph, etc., designation is shown in strike type only when the entire section is repealed. This assures the removal of each subsection, etc., designation during the publication process.

B.5.1.1.2 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 paragraph and subsection 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 paragraphs and subsections 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.

B.5.1.2 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.

B.5.1.2.1 To Repeal a C.R.S. Section

SECTION 13. In Colorado Revised Statutes, **repeal** 13-1-101.

B.5.1.2.2 To Repeal a Part

SECTION 14. In Colorado Revised Statutes, **repeal** part 4 of article 6 of title 13.

B.5.1.2.3 To Repeal Two or More Articles

SECTION 15. In Colorado Revised Statutes, **repeal** articles 10 and 12 of title 18.

B.5.1.2.4 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 sections from different titles are to be repealed, all sections should be listed numerically.

B.5.2 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, 2012; except that section 20 of this act takes effect January 1, 2013.

Repeal language will be added by revision to the provisions listed in section 20.

Alternative 2 (Preferred):

Provide for the future repeal in each section, part, or article by adding a repeal date in the statutes - this 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, 2013.

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, 2013.

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, 2013.

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, 2013.

B.6 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.6.1 To Add a Section Division

SECTION 26. In Colorado Revised Statutes, 13-1-118, **add** (1)(d) as follows:

B.6.2 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.6.3 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.6.4 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 data base.

SECTION 32. In Colorado Revised Statutes, **add** article 4 to title 13 as follows:

B.6.5 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.6.6.6 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.7 REPEALING AND REENACTING

B.7.1 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.7.2 To Repeal and Reenact a Section

SECTION 37. In Colorado Revised Statutes, **repeal and reenact, with amendments,** 1-1-101 as follows:

B.7.3 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:

B.7.4 To Repeal and Reenact an Article

SECTION 39. In Colorado Revised Statutes, **repeal and reenact, with amendments,** article 2 of title 31 as follows:

B.7.5 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 and the articles must be in the same title.

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:

When repealing and reenacting two or more parts or articles, one amending clause can add more than one provision, but the provisions must be on the same level, e.g. repeal and reenact two parts *or* two new articles, *but not* a part and an article.

B.8 RECREATING AND REENACTING

B.8.1 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.8.2 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.8.3 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.8.4 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.9 RELOCATING PROVISIONS

B9.1 Recodifying Existing Law

When adding with relocated provisions, if the relocated provisions are also amended, the instruction should include "amended". (See example B.9.1.2.2.) If the provisions are being relocated without amendment, do not include "amended". (See example B.9.1.2.1.) Provisions that are amended with relocated provisions do not need an additional "amended" in the instructions. (See examples B.9.1.1.1 and B.9.1.1.2.)

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 examples B.9.2.1 through B.9.2.4.)

B.9.1.1 Amend With Relocated Provisions

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.9.1.1.1 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.9.1.1.2 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, they can be moved from one article to another, but they always remain in one of those four articles.

B.9.1.2 Add With Relocated Provisions (either with amendments 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.9.1.2.1 To Relocate Multiple Sections from One Title, Article, Part, or Section to Another Title, Article, Part, or Section (Without Amendments)

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.9.1.2.2 Relocate Provisions from One Title, Article, Part, or Section to Another Title, Article, Part, or Section (With Amendments)

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.9.2 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.9.2.1 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.9.2.2 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.9.2.3 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.9.2.4 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.10 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.10.1. Option 1 - To Strike and Relocate the Prior Subsection (1)

SECTION 53. 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.10.2 Option 2 - To Repeal and Reenact the Entire Section

SECTION 54. 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.10.3 Option 3 - To Amend the Entire Section and Renumber

SECTION 55. 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.11 AMENDING EXISTING LAW AND ADDING NEW PROVISIONS

B.11.1 To Amend a Section Division and Add a Section Division

SECTION 56. In Colorado Revised Statutes, 31-31-402, **amend** (4); and **add** (2.5) as follows:

B.11.2 To Amend Two or More Section Divisions and Add One Section Division

SECTION 57. In Colorado Revised Statutes, 28-3.1-209, **amend** (1) and (3)(b); and **add** (3)(c) as follows:

SECTION 58. In Colorado Revised Statutes, 18-1-105, **amend** (6) and (7); and **add** (9) as follows:

SECTION 59. In Colorado Revised Statutes, 37-87-102, **amend** (2)(b), (2)(c), (3)(e), and (5); and **add** (2)(h) as follows:

B.11.3 To Amend one or more Section Divisions and Add Two or More Section Divisions

SECTION 60. In Colorado Revised Statutes, 28-3.1-409, **amend** (2); and **add** (5) and (6) as follows:

SECTION 61. In Colorado Revised Statutes, 37-87-102, **amend** (2); and **add** (4)(h) and (6) as follows:

SECTION 62. 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.11.4 To Amend an Introductory Portion and One Section Division and Add a Section Division

SECTION 63. In Colorado Revised Statutes, 11-2-119, **amend** (1) introductory portion and (2); and **add** (6) as follows:

B.11.5 To Amend an Introductory Portion and Two or More Section Divisions and Add Two or More Section Divisions

SECTION 64. 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.12 REPEALING PROVISIONS AND AMENDING AND/OR ADDING PROVISIONS

B.12.1 To Amend Section Divisions While Repealing Others

SECTION 65. 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.~~

NOTE: Subsection (2)(d) and (2)(h) are technically repealed but will be referred to as "deleted by amendment" when printed in C.R.S.

B.12.2 To Amend an Introductory Portion and One Section Division and Repeal a Section Division

SECTION 66. In Colorado Revised Statutes, 11-2-119, **amend** (1) introductory portion and (2); and **repeal** (6) as follows:

B.12.3 To Repeal Section Divisions While Adding a Section Division

SECTION 67. In Colorado Revised Statutes, 37-87-102, **repeal** (2)(b), (2)(c), (3)(e), and (5); and **add** (2)(h) as follows:

B.12.4 To Repeal a Section Division, Add Section Divisions, and Amend a Section Division

SECTION 68. In Colorado Revised Statutes, 28-3.1-409, **amend** (2); **repeal** (3)(c); and **add** (5) and (6) as follows:

B.13 REPEALING AND REENACTING PROVISIONS

B.13.1 To Repeal and Reenact Two or More Section Divisions and Amend a Section Division

SECTION 69. In Colorado Revised Statutes, 36-1-137, **amend** (3); and **repeal and reenact, with amendments,** (1) and (2) as follows:

B.13.2 To Repeal and Reenact Two or More Section Divisions, Amend a Section Division, and Add a Section Division

SECTION 70. In Colorado Revised Statutes, 36-1-137, **amend** (3); **repeal and reenact, with amendments,** (1) and (2); and **add** (4) as follows:

B.13.3 To Repeal and Reenact a Section Division, Amend a Section Division, Repeal a Section Division, and Add a Section Division

SECTION 71. In Colorado Revised Statutes, 36-1-137, **amend** (3); **repeal** (1); **repeal and reenact, with amendments,** (2); and **add** (4) as follows:

B.14 RECREATING AND REENACTING PROVISIONS

B.14.1 To Recreate and Reenact a Subsection with Amendments and Amend Another Provision

SECTION 72. In Colorado Revised Statutes, 12-47.1-502, **amend** (1)(d); and **recreate and reenact, with amendments,** (3) as follows:

B.15 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 either when the first version will no longer be effective or 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.

B.15.1 To Amend a Provision That Is Currently Effective (1st Version)

SECTION 73. 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.

*Do not include the editor's note in the bill

B.15.2 To Amend a Provision with a Future Effective Date (2nd Version)

SECTION 74. 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.

*Do not include the editor's note in the bill

NOTE: 1. Examples B.15.1 and B.15.2 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.

2. 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.

3. 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.15.3 To Amend a Provision with a Future Effective Date, and a Provision That Doesn't Have a Future Effective Date

SECTION 75. 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.15.4 To Amend More than One Provision with a Future Effective Date

SECTION 76. In Colorado Revised Statutes, 42-4-237, **amend as they will become effective July 1, 2013,** (3)(f) and (3)(g) as follows:

B.15.5 To Repeal a Provision That Is Currently Effective, Use this Type of Amending Clause

SECTION 77. 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.~~

*Do not include the editor's note in the bill

B.15.6 To Repeal a Provision with a Future Effective Date

SECTION 78. 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.~~

*Do not include the editor's note in the bill

B.16 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.16.1 To Amend a Section Division That Has Already Been Amended in a Bill Previously Passed During the Same Session

SECTION 79. In Colorado Revised Statutes, 24-30-203.5, **amend as amended by House Bill 11-1307** (4) as follows:

B.16.2 To Amend a Section Division That Has Been Newly Enacted in a Bill Previously Passed During the Same Session

SECTION 80. In Colorado Revised Statutes, 24-30-203.5, **amend as added by House Bill 11-1307** (5) as follows:

B.16.3 To Repeal a Section Division That Has Already Been Amended in a Bill Previously Passed During the Same Session

SECTION 81. In Colorado Revised Statutes, 24-30-203.5, **repeal as amended by House Bill 11-1307** (4) as follows:

B.16.4 To Amend a Section That Has Already Been Amended in a Bill Previously Passed During the Same Session

SECTION 81. In Colorado Revised Statutes, **amend as amended by Senate Bill 12-089** 12-22-113.5 as follows:

B.16.5 To Amend a Section That Has Been Newly Enacted in a Bill Previously Passed During the Same Session

SECTION 82. In Colorado Revised Statutes, **amend as added by House Bill 12-1009** 18-1-110 as follows:

B.16.6 To Repeal a Section That Has Already Been Amended in a Bill Previously Passed During the Same Session

SECTION 83. In Colorado Revised Statutes, **repeal as amended by Senate Bill 12-089** 12-22-113.5 as follows:

B.16.7 To Repeal a Section That Has Been Newly Enacted in a Bill Previously Passed During the Same Session

SECTION 84. In Colorado Revised Statutes, **repeal as added by House Bill 12-1009** 18-1-110 as follows:

B.16.8 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 85. In Colorado Revised Statutes, 26-4-528, **recreate and reenact, with amendments, as repealed by House Bill 12-1167** (1)(b) as follows:

_____

SECTION 86. 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.16.9 To Amend a Section That Has Already Been Amended in Two or More Bills Previously Passed During the Same Session

SECTION 87. In Colorado Revised Statutes, **amend as amended by Senate Bill 12-021 and House Bill 12-1011** 18-1-101 as follows:

B.16.11 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 88. Repeal sections 6 and 7 of House Bill 12-1001.

B.17 COMBINING INSTRUCTIONS THAT INCLUDE AMENDMENTS TO BILLS FROM EARLIER IN THE SAME SESSION

B.17.1 To Amend a Provision That Has Been Newly Enacted in a Bill Previously Passed During the Same Session and Add a New Provision

SECTION 89. 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.17.2 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 Division

SECTION 90. 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.17.3 To Amend Section Divisions That Have Already 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 Division

SECTION 91. 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.18 CONCURRENT RESOLUTIONS

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.

Constitution*

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?**	Can you combine **multiple Constitutional articles** within one amending clause?**
Amend	Yes	Yes	No	No
Amend with relocated	Yes	Yes	Yes, but sections must be in same	Yes

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?**	Can you combine **multiple Constitutional articles** within one amending clause?**
provisions			article	
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

* 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
** Do not combine in one amending clause provisions that are not on the same level—for example, do not amend a section with an article in one clause.

REMINDER: Section 2 (2) of article XIX of the state 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.18.1 To Amend a Constitutional Section

In the constitution of the state of Colorado, **amend** section 12 of article IV as follows:

B.18.2 To Repeal Two or More Constitutional Sections - Straight Repeal

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.18.3 To Repeal a Constitutional Section - User Friendly

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.18.4 To Add a Constitutional Section

In the constitution of the state of Colorado, **add** section 13 to article IV as follows:

B.18.5 To Amend a Constitutional Section Division and Add a Constitutional Section Division

In the constitution of the state of Colorado, section 49 of article V, **amend** (1); and **add** (3) as follows:

B.18.6 To Amend Two or More Constitutional Section Divisions

In the constitution of the state of Colorado, section 9 of article XVIII, **amend** (1), (4)(b), and (5)(b)(I) as follows:

B.18.7 To Amend a Constitutional Section Division and Repeal a Constitutional Section Division

In the constitution of the state of Colorado, section 9 of article XVIII, **amend** (1); and **repeal** (4)(b) as follows:

B.19 SESSION LAWS

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.

Session Laws*

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

* 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.19.1 Amending Bills from Prior Sessions

B.19.1.1 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 92. In Session Laws of Colorado 2012, **amend** 22-44-103.5, Colorado Revised Statutes, as amended by section 1 of chapter 83, as follows:

This situation would occur during a special session.

B.19.2 Amending Prior Bills with Non-C.R.S. Sections

B.19.2.1 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 93. 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.19.2.2 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.

SECTION 94. 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 95. 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 96. 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.19.2.3 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 97. 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 98. 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 the rerevised version of that bill.

B.19.2.4 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 99. 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.19.2.5 To Amend a Section of a Resolution or Joint Resolution That Was Printed in the Session Laws

SECTION 100. 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.19.2.6 To Amend a Section of a Resolution or Joint Resolution That Was Printed in the Session Laws if it Has Been Previously Amended

SECTION 101. 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 the rerevised version of that bill.

B.20 RULES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES AND THE JOINT RULES

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 introductory portion, 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.

House and Senate Rules*

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

* 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.20.1 Rules of Either House

B.20.1.1 To Amend a Rule of Either House

That in the Rules of the Senate, Rule No. 21, **amend** (a)(9) as follows:

B.20.1.2 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.20.1.3 To Repeal a Rule of Either House

That in the Rules of the Senate, **repeal** Rule No. 42 as follows:

B.20.2 The Joint Rules

B.20.2.1 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.20.2.2 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.20.2.3 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.20.2.4 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.20.2.5 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.20.3 The Joint Session Rules

B.20.3.1 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.20.3.2 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.20.3.3 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.21 AGENCY RULES AND REGULATIONS

To amend or repeal an agency rule, **see the rule review supervisor for instructions** and Appendix H of this manual.

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APPENDIX C
AMENDMENT SAMPLES

C.1 SAMPLE COMMITTEE REPORT

Amend printed (or reengrossed) 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 2, after line 10 insert:

"(4) THIS IS AN ENTIRE SUBSECTION INSERTED AFTER A LINE.".

Page 2, line 13, strike "(4)" and substitute "(5)".

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 9, line 7, strike "or counties," and substitute "~~or counties,~~".

Page 9, line 10, strike "~~annually~~ SEMIANNUALLY" and substitute "annually".

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 7, after "(1)(b)," insert "(2)(b)(I)(C),".

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, strike lines 4 through 13.

Renumber succeeding sections accordingly.

Page 19, line 17, strike "TEN".

Page 21, strike lines 6 through 15.

Renumber succeeding C.R.S. sections accordingly.

Page 21, line 23, before "COUNTIES" insert "CITIES OR".

Page 23, strike lines 7 through 17.

Reletter succeeding paragraphs accordingly.

Page 23, line 21, after "ANY" insert "REASONABLE" and before the period insert "ONLY".

Strike page 27.

Strike pages 29 through 36.

Page 37, strike lines 1 through 3.

Renumber succeeding sections accordingly.

Page 38, before line 1 insert:

"**SECTION 25. Effective date.** This act takes effect July 1, 2010.".

Renumber succeeding section accordingly.

Page 1, line 102, strike "**NUMBERS**" and substitute "**LETTERS**".

C.2 AMENDMENTS TO COMMITTEE 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 committee report *cannot* be amended once it has been adopted on the floor.

C.2.1 To Amend a Committee of Reference Amendment

Amend the Judiciary Committee Report, dated January 13, 2000, 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".

C.2.2 To Strike a Committee of Reference Amendment

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, 2000, and substitute:

"Amend printed bill, page 1, line 5, strike "TEN" and substitute "FIVE".".

Senate only:

Strike the Finance Committee Report, dated January 14, 2000.

Amend printed bill, page 1, line 5, strike "TEN" and substitute "FIVE".

When striking more than one committee amendment, strike the most recent amendment first.

House or Senate:

Strike the Appropriations Committee Report, dated April 14, 2000, and substitute:

"Strike the Transportation Committee Report, dated February 22, 2000, and substitute:

"Amend printed bill, page 5, line 10, after "NUMBERED" insert "YEARS".".".

Senate only:

Strike the Appropriations Committee Report, dated April 14, 2000.

Strike the Transportation Committee Report, dated February 22, 2000.

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 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.

> 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".
>
> Page 6, line 22, strike "DIRECTOR" and substitute "BOARD".
>
> Page 8, line 4, strike "director" and substitute "~~director~~ BOARD".
>
> Page 8, line 15, strike "director" and substitute "~~director~~ BOARD OF MEDICAL EXAMINERS".
>
> Page 9, line 4, strike "director" and substitute "~~director~~ BOARD OF MEDICAL EXAMINERS".

> 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,".

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 ("Page 6 *of printed bill*" or "Page 3 *of the committee report*"), and subsequent references to the document can be shortened (Page 7 *of the bill*" or "Page 4 *of the report*"). Note that if there are two different committee reports, for example, being amended in the amendment, the full name of each report should be referred to and not shortened for purposes of clarity.

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.".

Amend the Health and Human Services Committee Report, dated January 30, 2009, page 2, after line 2 insert:

"Page 2 of 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".

Page 4 of the bill, strike line 1.

Page 4 of the bill, line 2, strike "(13), C.R.S., and".".

Amend the Appropriations Committee Report, dated April 22, 2009, page 1, strike line 1 and substitute:

"Amend the Education Committee Report, dated April 20, 2009, 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 - IN THE SENATE ONLY

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 would have to be offered before the floor amendment at issue was adopted and would follow the format of the first example.

C.5.1 To Strike a Previous Floor Amendment on the Same Day

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

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 is not yet Adopted on Second Reading and is Referred to a Committee of Reference or is Referred by Motion of a Member, as Amended, Prior to Committee of the Whole Action to a Committee of Reference

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 adoption. Senate floor amendments are amended after adoption 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)

Any amendment to the title of the bill is made after the amendments to the body of the bill. When writing a SEBEC amendment, *do not* specify page or line numbers.

> 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 hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.".
>
> Page 1, line 102, strike "**PENALTIES**".

C.9 A SENATE AMENDMENT TO A COMMITTEE REPORT AND TO THE BILL IN THE SAME AMENDMENT

In the Senate, it is permissible to do a single amendment that amends both a committee report and the bill. This can be done in an amendment prepared for a committee amendment 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. Refer to section C.6 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 version.

> 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 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".

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APPENDIX D
CONFERENCE COMMITTEE REPORTS

D.1 Sample Conference Committee Reports

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 BUT NEED NOT BE LIMITED TO CONTRACTING FOR THE USE OF A PRIVATELY OWNED AND OPERATED FACILITY TO HOUSE AND PROVIDE SERVICES TO SAID PERSONS, CONTRACTING WITH COUNTY JAILS TO HOUSE AND PROVIDE SERVICES TO SAID PERSONS, AND ANY OTHER OPTIONS WHEREBY THE DEPARTMENT MAY SAFELY AND EFFECTIVELY HOUSE AND PROVIDE SERVICES TO SAID 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 SHALL

BE 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:	House Committee:
_____	_____
Chair	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:	Senate Committee:
_____	_____
Chair	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 houses.

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 an amendment that is within the scope of the differences between the two houses and an amendment that is outside 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 SUCH PERSON HAS LEFT OR WILL LEAVE school for any reason, OR SUCH 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 "SUCH RULES SHALL 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:	House Committee:
_____	_____
Chair	Chair
_____	_____
_____	_____

Note: In this example, the conferees wanted to strike something from the reengrossed bill that had not been amended in the second house. Therefore, the issue was beyond the scope of the differences between the houses. The conferees decided to have the Senate recede and 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:	Senate Committee:
_____	_____
Chair	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 SB99-80

****
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 SB99-80, 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 conferees 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 conferees 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 a very rare occurrence for the drafter to be asked to draft a "majority report". What typically happens is that a conference committee report is drafted that at least four members will sign and subsequent to the preparation of the report a minority report is then requested for the other two 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 SB99-22

****
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 SB99-22, 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 SUCH 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 making an appropriation in connection therewith, 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 do a second report *if* it is a *corrected* report correcting a mistake in the first report.

CLSB028.002

SECOND REPORT OF FIRST CONFERENCE COMMITTEE
ON SB99-28

****
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 SB99-28, 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, SHALL 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 SHALL TERMINATE 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:	House Committee:
_____	_____
Chair	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:	Senate Committee:
_____	_____
Chair	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[99]

STAGE OF PROCEEDINGS	POSSIBLE ACTIONS	RESULTS
1. Consideration of Senate amendments HR 36; JR 4	House concurs in amendments and readopts bill	Bill delivered to Governor
	House rejects Senate amendments and adheres to House position	Senate recedes and readopts bill; bill delivered to Governor
		Senate adheres; bill dies
	House rejects amendments and requests conference committee ("CC")	House and Senate appoint conferrees
2. Conference Committee Appointed HR 36(c) JR 5; JR 6(a)	Prior to consideration of CC report, House votes to recede and readopts bill	Bill delivered to Governor
	Prior to consideration of CC report, House votes to adhere	Senate recedes and readopts bill; bill delivered to Governor
		Senate adheres; bill dies
	Prior to delivery of CC report, Senate votes to recede and readopts bill	Bill delivered to Governor
	Prior to delivery of CC report, Senate votes to adhere	House recedes and readopts bill; bill delivered to Governor
		House adheres; bill dies
Note: After one day of actual session following referral of a bill to CC, either house, by majority vote, can demand that the CC report within 2 days after the demand (within last 5 days of session, CC must report on same day as demand). If CC doesn't report, CC is discharged and the houses may appoint a second CC or either house may adhere. (JR 7)		

[99] 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".

STAGE OF PROCEEDINGS	POSSIBLE ACTIONS	RESULTS
3. CC Report delivered to Senate HR 36(c); JR 6(b)	Senate votes to adhere	House recedes and readopts bill; bill delivered to Governor
		House adheres; bill dies
	Senate votes to recede and readopts bill	Bill delivered to Governor
	Senate rejects the report, dissolves the CC and appoints conferees to a 2nd CC (note: can only have 2 CCs)	House agrees to 2nd CC and appoints conferees (return to stage #2)
		House does not agree to 2nd CC; Senate may: 1. adhere; or 2. recede and readopt bill; or 3. reconsider rejection and adopt report
		By next day of actual session, House recedes and readopts bill; bill delivered to Governor
	Senate adopts report, readopts bill	Bill delivered to House for action
4. CC Report adopted by Senate and delivered to House JR 6(c)	House votes to adhere	Senate reconsiders adoption of CC report and readoption of bill; Senate recedes and readopts bill; bill delivered to Governor
		Senate does not reconsider adoption of CC report; bill dies
	House votes to recede and readopts bill	Senate reconsiders adoption of CC report and readoption of bill; bill delivered to Governor
	House rejects CC report and appoints conferees to a 2nd CC	No later than next day of actual session, Senate reconsiders adoption of CC report and readoption of bill and appoints conferees to a 2nd CC (return to stage #2)
		Senate does not agree to 2nd CC; House may: 1. adhere; or 2. recede and readopt bill; or 3. reconsider rejection and adopt report
	House adopts CC report and readopts bill	Bill delivered to Governor

D.3 Conference Committee Options for Senate Bills[100]

STAGE OF PROCEEDINGS	POSSIBLE ACTIONS	RESULTS
1. Consideration of House amendments JR 4 SR 19	Senate recedes from the Senate position, concurs in amendments, and readopts bill	Bill delivered to Governor
	Senate adheres to the Senate position	House recedes and readopts bill; bill delivered to Governor
		House adheres; bill dies
	Senate requests conference committee ("CC")	House and Senate appoint conferrees
2. Conference Committee Appointed JR 5; JR 6(a)	Prior to consideration of CC report, Senate votes to recede and readopts bill	Bill delivered to Governor
	Prior to consideration of CC report, Senate votes to adhere	House recedes and readopts bill; bill delivered to Governor
		House adheres; bill dies
	Prior to delivery of CC report, House votes to recede and readopts bill	Bill delivered to Governor
	Prior to delivery of CC report, House votes to adhere	Senate recedes and readopts bill; bill delivered to Governor
		Senate adheres; bill dies
Note: After one day of actual session following referral of a bill to CC, either house, by majority vote, can demand that the CC report within 2 days after the demand (within last 5 days of session, CC must report on same day as demand). If CC doesn't report, CC is discharged and the houses may appoint a second CC or either house may adhere. (JR 7)		

[100] As an aid to reading the rules relating to conference committees, please note that in nearly all circumstances involving Senate bills, the Senate will be the "requesting house" and the House will be the "assenting house".

STAGE OF PROCEEDINGS	POSSIBLE ACTIONS	RESULTS
3. CC Report delivered to House JR 6(b)	House votes to adhere	*Senate recedes and readopts bill; bill delivered to Governor*
		Senate adheres; bill dies
	House votes to recede and readopts bill	Bill delivered to Governor
	House rejects the report, dissolves the CC and appoints conferees to a 2nd CC (note: can only have 2 CCs)	Senate agrees to 2nd CC and appoints conferees (return to stage #2)
		Senate does not agree to 2nd CC; House may: 1. adhere; or 2. recede and readopt bill; or 3. reconsider rejection and adopt report
	House adopts report, readopts bill	Bill delivered to Senate for action
4. CC Report adopted by House and delivered to Senate JR 6(c)	Senate votes to adhere	House reconsiders adoption of CC report and readoption of bill; House recedes and readopts bill; bill delivered to Governor
		House does not reconsider adoption of CC report; bill dies
	Senate votes to recede and readopts bill	House reconsiders adoption of CC report and readoption of bill; bill delivered to Governor
	Senate rejects CC report and appoints conferees to a 2nd CC	No later than next day of actual session, House reconsiders adoption of CC report and readoption of bill and appoints conferees to a 2nd CC (return to stage #2)
		House does not agree to 2nd CC; Senate may: 1. adhere; or 2. recede and readopt bill; or 3. reconsider rejection and adopt report
	Senate adopts CC report and readopts bill	Bill delivered to Governor

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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 seven main categories, all of which include subcategories. The seven categories consist of six types of clauses that JBC staff most commonly uses and the seventh category includes all of the remaining clauses. The category descriptions preceding the clauses are the same as the macro buttons, and the examples are derived from the macro.

E.1 Appropriation to Single Department - Purpose(s) Specified

E.1.1 Multiple Purposes - General Fund - Paragraph Format

SECTION X. Appropriation. (1) For the 2019-20 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 X. 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.

E.1.3 Multiple Purposes - Column Format Synched with Long Bill

SECTION X. Appropriation. (1) 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 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 X. Appropriation. For the 2019-20 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 X. 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.

E.1.6 Single Purpose - Multisource

SECTION X. Appropriation. For the 2019-20 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 Multipurpose - Multisource

SECTION X. Appropriation. (1) For the 2019-20 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 X. Appropriation. For the 2019-20 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 X. Appropriation. For the 2019-20 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 X. Appropriation. For the 2019-20 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 X. Appropriation - adjustments to 2019 long bill. To implement this act, the general fund appropriation made in the annual general appropriation act for the 2019-20 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 X. Appropriation - adjustments to 2019 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 2019-20 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 X. 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.

E.3.3 Long Bill Adjustment and New Appropriation

SECTION X. 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 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 2019-20 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 X. Appropriation - adjustments to 2019 long bill. (1) To implement this act, general fund appropriations made in the annual general appropriation act for the 2019-20 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 2019-20 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 X. 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.

E.3.6 Long Bill Adjustment Including Change to Federal Funds

SECTION X. Appropriation - adjustments to the 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 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 2019-20 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 X. Appropriation. (1) For the 2019-20 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 2019-20 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 X. Appropriation. (1) For the 2019-20 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 2019-20 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 X. Appropriation. (1) For the 2019-20 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 2019-20 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 X. Appropriation. (1) For the 2019-20 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 2019-20 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 X. Appropriation. (1) For the 2019-20 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 2019-20 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 X. Appropriation. (1) For the 2019-20 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 2019-20 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 X. 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

17-18-127. 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.

SECTION X. 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.

E.5.3 5-year Appropriation Language - No Capital Construction

17-18-127. Appropriation to comply with section 2-2-703 - HB 19-1189 - repeal. (1) Pursuant to section 2-2-703, the following statutory appropriations are made in order to implement House Bill 19-1189, enacted in 2019:

(a) For the 2019-20 state fiscal year, four hundred eighty-five thousand dollars is appropriated to the department from the general fund;

(b) For the 2020-21 state fiscal year, five hundred sixty thousand four hundred dollars is appropriated to the department from the general fund;

(c) For the 2021-22 state fiscal year, six hundred seventy-one thousand fifty-one dollars is appropriated to the department from the general fund;

(d) For the 2022-23 state fiscal year, one million one hundred thousand dollars is appropriated to the department from the general fund; and

(e) For the 2023-24 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, 2024.

E.5.4 Exception to Regular 5-year Appropriation Language

SECTION X. 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 X. Federal funds. For the 2019-20 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 included for informational purposes only.

E.6.2 Single State Fund and Federal Funds - Single Purpose - No (M) Notation

SECTION X. Appropriation. (1) For the 2019-20 state fiscal year, $19,679 is appropriated to department of human services for use by the office of behavioral health. This appropriation is from the general fund. To implement this act, the office may use this appropriation for operating expenses related to community behavioral health administration.

(2) For the 2019-20 state fiscal year, the general assembly anticipates that the department of human services will receive $217,711 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, which is included for informational purposes only.

E.6.3 Multiple State Funds and Federal Funds - Single Purpose - (M) Notation

SECTION X. Appropriation. (1) For the 2019-20 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 2019-20 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 X. Appropriation. (1) For the 2019-20 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 2019-20 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 X. Appropriation. (1) For the 2019-20 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 2019-20 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 included for informational purposes only. 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 X. 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 X. Appropriation. For the 2019-20 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 X. Appropriation. (1) For the 2019-20 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.7.3 Capital Construction Appropriations

E.7.3.1 For Capital Construction

SECTION X. Capital construction appropriation. For the 2019-20 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 X. Capital construction appropriation. For the 2019-20 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 X. Appropriation. For the 2018-19 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, 2019, is further appropriated to the board for the 2019-20 state fiscal year for the same purpose.

E.7.5 Release of Overexpenditure

SECTION X. 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 X. Appropriation. For the 2019-20 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 X. Appropriation - derived from savings. (1) For the 2019-20 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 19-123, enacted in 2019.

SECTION Y. Effective date. (1) Except as specified in subsection (2) of this section, this act takes effect September 1, 2019.

(2) This act takes effect only if:

(a) The net reduction in the appropriation from the general fund made in Senate Bill 18-123 is equal to or greater than the amount of the general fund appropriation made in subsection (1) of section X of this act;

(b) Senate Bill 19-123 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, 2019, 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 X. Appropriation. For the 2019-20 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 X. Transfer of appropriation. (1) For the 2019-20 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 2019-20 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 X. Transfer of appropriation. Any appropriation made in the annual general appropriation act for the 2019-20 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 X. Appropriation. (1) For the 2019-20 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 X. Appropriation. 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.

E.7.11.2 With Associated Spending Authority

SECTION X. 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.

E.7.12 TANF Funds

SECTION X. Appropriation. For the 2019-20 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

The following is Part I 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. No effort has been made to update any part of the memo -- the case law it cites goes only through 1971. **Please note:** Part II of the memo, Compilation of Colorado Cases and Opinions, can be accessed via the web.

BILLS TO CONTAIN ONE SUBJECT

Summary

This memorandum deals with two sections of article V of the Colorado Constitution. Section 21 requires that a bill treat only one subject and that the subject be clearly expressed in the title of the bill. Section 17 forbids amendments to a bill which would change its original purpose.

The policy behind the one-subject rule is twofold: First, to discourage the practice of combining unrelated measures in one bill in order to enlist the supporters of each measure and thereby form a majority; and second, to facilitate the orderly conduct of legislative business. The purpose of requiring that the subject of a bill be expressed in its title is to make legislators and the public aware of the contents of proposed legislation. Finally, the prohibition against changing the original purpose of a bill seeks to assure that unrelated subjects are not substituted or added at a point late in the legislative process, thus affording proper consideration of all legislative proposals. These policies were thought to be sufficiently important that their violation was made to result in an invalid statute and a disappointing misapplication of the legislature's time.

The Colorado Supreme Court's interpretations of these rules suggest that legislators and draftsmen should keep in mind the following propositions, as well as the policies which underlie the constitutional rules:

(1) Broad, general titles of bills are the safest from a constitutional standpoint, since a general title is most likely to encompass every matter treated in the bill. An enumeration of the provisions of the bill is neither necessary nor desirable, since anything germane to the general subject stated in the title may be included in the bill.

(2) Broad, general titles have the disadvantage of allowing amendments which may jeopardize the passage of the bill or are unrelated to its sponsor's aims. Careful draftsmanship can often provide a narrow, specific title to avoid this problem, although a narrow title could conceivably foreclose amendments which the sponsor subsequently found desirable.

(3) Titles may be amended in the legislative process to cover the original purpose of a bill as extended by amendments. Indeed, the rule which requires that the title reflect the contents of the bill may demand amendments to a title in some cases.

(4) The "subject" of a bill and its "original purpose" are similar concepts. An amendment which alters the original purpose of a bill may well cause the bill to embrace two subjects.

(5) The subject of a bill whose title refers to the amendment or repeal of a named section of the statutes is determined by looking at the subject of the section named and analyzing the effect of the amendment or repeal provision. The reference to a specific section thus defines and limits the subject of the bill only indirectly, and the naming of the section treated does not necessarily foreclose amendments to other statutory sections which treat the same subject.

(6) The general appropriations bill must treat only "appropriations", and other appropriations must be made by separate bills which embrace only one subject. However, an appropriation may be included in any bill if it is germane to the single subject of that bill and is necessary to effectuate its purpose.

Since almost every legislator and legislative staff member is occasionally faced with a problem involving the application of these constitutional rules, it is useful to be acquainted with their background and the way they have been applied to past problems. This memorandum is divided into two parts. Part I contains a narrative discussion and analysis of the rules, the policies which they seek to effect, and the manner in which they are applied. The footnotes to the text may be found following Part I. Part II consists of synopses of the important Colorado interpretations of the constitutional rules. It is hoped that these materials will prove helpful in dealing with future situations involving this kind of constitutional problem.

PART I
Discussion

Introduction

To minimize the possibility that a Colorado statute will be held unconstitutional because of errors in drafting or amending, legislators and those who work with the legislature should give some attention to the requirements of two sections of article V of the Colorado Constitution.

Section 21 requires that:

(1) No bill may concern more than one general subject (the "one-subject rule"); and

(2) The general subject of a bill must be clearly expressed in its title (the "descriptive title rule").

Section 17 prohibits any amendment of a bill which changes its original purpose (the "original purpose rule").

A violation of these rules will result in the objectionable portion of the statute's being declared void.

Although these rules may seem to be simply matters of form, they represent important substantive policies. To avoid the waste of legislative effort which would result from a successful constitutional challenge on the basis of article V, section 21, bills should be carefully conceived and drafted, with due regard for the prohibition of more than one subject and the need for descriptive titles. Moreover, care should be taken throughout the legislative process to assure that a bill which was in proper form as introduced is not invalidated by an amendment which changes its original purpose.

A. Section 21 - One-subject rule and descriptive title rule.

Section 21 of article V of the Colorado constitution provides:

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

The Supreme Court of Colorado has held that this section is not simply a recommendation to the legislature but is a command which if disregarded will result in all or part of the subsequent statute's being of no effect.[1]

Similar constitutional requirements exist in thirty-eight other states.[2] Only North Carolina and the six New England states have no such restrictions. New York and Wisconsin have a one-subject rule which applies only to private and local laws, and the Arkansas and Mississippi provisions apply only to appropriation bills. The federal constitution has no similar requirement; however, the U.S. House of Representatives has a rule which provides that "No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

Article V, section 21, consists of two separate but related requirements. For purposes of analysis, they will be discussed separately. First, there is the requirement that each bill shall embrace but one subject. The purpose of this provision was discussed by the Colorado Supreme Court in the case of *Catron v. Co. Commissioners*, decided in 1893:

> "The practice of putting together in one bill subjects having no necessary or proper connection, for the purpose of enlisting in support of such bill the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits, was undoubtedly one of the evils sought to be eradicated."[3]

More bluntly stated, one purpose of the one-subject rule is to discourage the practice of logrolling. It is argued that the rule serves this purpose only partially and indirectly, since it does not prevent the practice of logrolling by creating a coalition to support a group of bills, each of which treats a single subject. However, the one-subject rule appears to make logrolling more difficult insofar as the effort required to pass a series of bills is greater than that required to get a single omnibus bill passed.[4]

A second purpose of the one-subject rule is to facilitate orderly legislative procedure. If each bill treats only one subject, debate can be limited to the matter at hand without introducing extraneous issues; furthermore, each bill can be more easily grasped and more intelligently discussed.[5]

The one-subject requirement pertains to the substance of a bill and, strictly speaking, has no bearing on the way in which the title of the bill is drafted. If the substantive provisions of a bill can be said to relate to a single general subject, the bill meets the requirements of the one-subject rule, even though its title

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[1] *In re Breene*, 14 Colo. 401, 24 P. 3 (1890).

[2] Alabama, Alaska, Arizona, California, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming.

[3] 18 Colo. 553, at 557, 33 P. 513 at 514. See also the discussion of the purpose of the one-subject rule in *In re House Bill No. 168*, 21 Colo. 46, at 51, 39 P. 1096, at 1098 (1895).

[4] Ruud, "No Law Shall Embrace More Than One Subject", 42 Minn.L.Rev. 389, at 448-451 (1958).

[5] Ruud, *supra* note 4, at 391.

seems to recite more than one subject.[6]

Example: [The same basic example will be used throughout this memorandum to illustrate the various points made about the constitutional rules.] Assume that Representative X wants to increase the fee for motor vehicle safety inspections. He introduces a bill entitled "A bill for an act concerning the regulation of equipment necessary for the safe operation of motor vehicles, and increasing the fee for motor vehicle safety inspections". The bill does not violate the one-subject rule if its substance relates to the single subject of an increase in fees.

However, while a bill does not violate the one-subject rule if it in fact deals with just one subject, it is by far the better practice to draft titles which clearly relate to one general subject, and only one. The Supreme Court has stated:

> ...it would be unreasonable as well as dangerous to require that each and every specific branch or subdivision of the general subject of an act be enumerated by its title. In reciting the several subordinate matters referred to, the hazard of violating that part of the provision which prohibits the treatment of more than one subject in the act is incurred; and, as a rule, it is wiser and safer not to attempt such enumeration, but to select an appropriate general title, broad enough to include all the subordinate matters considered.[7]

In the example above, an appropriate general title might be "A bill for an act concerning motor vehicle safety inspections". This brings us to the second requirement of article V, section 21, which provides that the subject of a bill shall be clearly expressed in its title.

The purpose of the constitutional requirement concerning descriptive titles is to give notice to legislators and the public of the contents of a bill, thus preventing deception and avoiding the passage of a bill which might be defeated if its true subject were disclosed. On the other hand, a requirement that each particular matter treated in the bill be listed in the title would result in cumbersome titles and the possibility that, if one item were omitted from the title, the resulting legislation would be constitutionally defective. Accordingly, the rule that the subject of a bill must be clearly expressed in its title has been interpreted to mean that the *general* subject must be clearly expressed. Furthermore, anything germane to that subject may be treated in the bill without violating the descriptive title rule or, incidentally, the prohibition against more than one subject. The Colorado Supreme Court in 1893 gave some good advice to legislators and draftsman about the requirement that a bill's title must clearly disclose the subject of the bill:

> ...the generality of a title is oftener to be commended than criticised, the constitution being sufficiently complied with so long as the matters contained in the bill are directly germane to the subject expressed in the title. Legislators, frequently, and sometimes good lawyers, fall into the mistake of entering into particulars in the title, thereby curtailing the scope of the legislation which might properly be enacted within the limits of a single

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[6] *Harding v. The People*, 10 Colo. 387, 15 P. 727 (1887). Objection was made to a title which seemed to name two subjects. The court said, "The constitutional inhibition goes to `acts' containing more than one subject. With respect to the title, the only requirement is that it clearly express the subject of the act. ...It is true that the title expresses both the general and special character of the act; but we see no objection to this." 10 Colo. at 391-92, 15 P. at 729.

[7] *Edwards v. Denver & R.G.R. Co.*, 13 Colo. 59, at 65, 21 P. 1011, at 1013 (1889).

act.[8]

Example: Assume that Rep. X wanted, in addition to raising the fee for motor vehicle safety inspections, to require inspections four times per year instead of twice, and to transfer the duty of administering the inspection program to the Colorado state patrol. The Supreme Court would criticize a title such as "A bill for an act concerning motor vehicle safety inspections, increasing the fee therefor, prescribing the frequency thereof, and transferring the powers and duties of the department of revenue with respect thereto to the Colorado state patrol". A general title, such as "A bill for an act concerning motor vehicle safety inspections", would suffice to cover all the desired provisions. It should be noted that such a general title would permit amendments concerning subdivisions of the general subject other than those sought by Rep. X; however, the detailed title does not limit the subject matter either, since the one general subject of both bills is "motor vehicle safety inspections".

In spite of the arguments favoring generality in titles, it is sometimes desirable to narrow the scope of a title in order to avoid amendments which might jeopardize the passage of the bill or which are unrelated to the specific purpose for which the bill was introduced. This narrowing of the general subject may be accomplished by careful draftsmanship:

> If the title of a bill be limited to a particular subdivision of a general subject, the right to embody in the bill matters pertaining to the remaining subdivisions of such subject is relinquished. To hold otherwise would be to disobey the constitutional mandate...[9]

An example of permissible narrowing of a title occurred in the 1970 session of the General Assembly, when the Attorney General ruled that a bill entitled "A Bill for An Act Changing the Name of `Colorado State College' to the `University of Northern Colorado'" could not be amended to include measures relating to Southern Colorado State College. The amendments would have had the effect of causing the bill to violate article V, section 21.[10]

Example: The narrowest title for Rep. X's bill dealing only with fees might be "A bill for an act concerning an increase in the fee for motor vehicle safety inspections". This title would foreclose amendments which dealt with the frequency of inspections or with other matters falling under the general heading of safety inspections. It would probably even prohibit amendments which would result in the lowering of fees; this latter concept will be treated in the discussion of the original purpose rule.

Several of the cases collected in Part II of this memorandum illustrate the way in which a court applies the descriptive title rule. The cases also illustrate how interrelated the one-subject rule and the descriptive title rule are. For instance, where a title seems to embrace more than one subject, even though the bill in fact deals with only one general subject, a court will often find that general subject stated in the title and will in effect ignore the clauses which merely concern subordinate matters. In the case of Clare v. People, the act being questioned was entitled "An act to facilitate the recovery of ore taken by theft or trespass, to regulate sale and disposition of the same, and for the better protection of mine owners". The Supreme Court said that the first two elements of the title were included in the third, and

> There being one general subject expressed, the fact that the legislature saw fit to

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[8] *Catron v. Co. Commissioners*, 18 Colo. 553, at 558, 33 P. 513, at 514 (1893).

[9] *In re Breene*, 14 Colo. 401, 24 P. 3 (1890).

[10] Opinion No. 70-4416, dated January 30, 1970. The opinion also considers the question from the standpoint of section 17 of article V, the original purpose rule.

> incumber this title with two specifications under that subject does not render it obnoxious to the constitutional objection now urged [the one-subject rule]. One of the two purposes effectuated by this constitutional provision was to prevent uniting with each other in statutes incongruous matters having no necessary connection or proper relation; and where, as in the case at bar, one general subject be clearly expressed, the addition of subdivisions thereof does not necessarily vitiate the whole title.[11]

Therefore, it is important in drafting titles to be sure that the general subject of the bill is expressed in the title; one may question whether a title which contained only a recital of the subordinate matters treated, without clearly stating the one general subject of the bill, would meet constitutional requirements.[12]

Example: Assume Rep. X's bill deals both with fees and with frequency of inspections, and is entitled "A bill for an act concerning fees for motor vehicle safety inspections, prescribing the frequency thereof, and regulating equipment which is necessary for the safe operation of motor vehicles". A court would probably find that the final clause stated the one general subject of the bill.

If the bill's title were "A bill for an act concerning an increase in the fee for motor vehicle inspections and in the number of inspections required per year", is the one general subject of the bill clearly expressed in its title? Does the bill comply with the one-subject rule?

Consequences of violating the constitutional provision. The constitution states that if a bill concerns a subject not expressed in the title, only that part which is not expressed will be void. When a court is faced with a bill whose title indicates a single subject but whose substance includes matters not expressed in the title, it theoretically has two choices. The court could say that the bill treats two separate subjects, or it could say that the title does not give adequate notice of the contents of the bill. In fact, the courts almost always choose the latter alternative and speak as if they were applying the descriptive title rule and the policy of disclosure which that rule embodies. One reason for favoring an application of the descriptive title rule over an application of the one-subject rule is the policy which dictates that legislation should be upheld if it is reasonably possible. Thus if an act concerns matters outside its title, the policy behind the rule on descriptive titles requires only that the portion of the act not disclosed be struck, while the policy behind the one-subject rule -- discouragement of logrolling -- would require that the entire act be invalidated, since a court usually cannot decide which subject the legislature intended to have the greater dignity and since the entire act is the product of the condemned practice of combining minorities to produce a majority[13]. Naturally, where none of the substance of an act is indicated by its title, the entire act has been declared void.

Example: Assume that Rep. X's bill passes with the title "An act concerning fees for motor vehicle safety inspections" and that the act treats both the subject of fees and the subject of frequency of inspections. A court could say that the act has two subjects and must be stricken in its entirety. However, it would probably find that the title does not adequately disclose the contents of the bill and would invalidate only the portion concerning frequency of inspections.

Repeals. It should be noted that the subject of a provision in an act which repeals substantive law is considered to be the subject of the law repealed, not "repeal". Thus a bill which repeals several provisions, each of which has a different subject, will violate the one-subject rule; the policies embodied

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[11] 9 Colo. 122, at 126, 10 P. 799, at 801 (1886).

[12] *In re Breene*, 14 Colo. 401, at 406, 24 P. 3, at 4 (1890).

[13] Ruud, *supra* note 4, at 398-399.

in the rule are just as applicable to legislation involving repeals as to the enactment of new law.

In a comparatively recent Colorado case, the rule on drafting of titles was applied to a repeal provision. Where the title of the act referred to loans or advancements of $300 or less, but the act contained a provision repealing a law concerning loans with security in any amount, the Supreme Court held that the repeal provision had no effect on the prior law insofar as that law applied to loans over $300[14]. Of course, repeals which concern the one general subject of a bill do not violate either the descriptive title rule or the one-subject rule.

Amendments to existing sections or acts. Titles are sometimes drafted which specify that the bill is one "amending section ____, Colorado Revised Statutes 1963", and so forth. This kind of title presents the issues of whether the title gives sufficient notice of the contents of the bill and whether the subject of the existing section or act being amended limits the subject of the bill. The answer to both has been in the affirmative. Thus the title of an act which read "An act to amend subdivision fifteen of section five thousand nine hundred and twenty-five of the Revised Statutes of Colorado for the year 1908, the same being a part of section sixty of chapter one-hundred and twenty-four, in relation to schools" was upheld as properly descriptive of the contents of the bill, but the court indicated that a subject foreign to the one already treated by the statutory section to be amended could not be introduced into that section under this title[15]. This decision, and others construing titles in this form, imply that the general subject of this type of bill is the subject of the section or act being amended, not "amendment of the stated section"[16]. Another question, to be discussed in the portion of this memorandum dealing with the original purpose rule, is whether any portion of existing law other than that specified in the title can be amended under such a title, even if the subject of the unspecified section is the same as the subject of the named section.

Example: Assume that Rep. X's bill to increase fees is entitled "A bill for an act amending 13-5-114 (5), Colorado Revised Statutes 1963, as amended". The specified subsection deals only with fees. The bill would violate the descriptive title rule if it included amendments to that subsection which concerned a subject other than fees. But consider the situation where the title reads "A bill for an act amending 13-5-114 (5), Colorado Revised Statutes 1963, as amended, concerning motor vehicle safety inspections". Does the addition of the final clause evidence an intent to make the subject broad and general, thus permitting amendments in areas other than fees?

Appropriation acts. It will be remembered that section 21 of article V excepts "general appropriation bills" from its provisions. Section 32 of article V, however, provides:

> **Section 32. Appropriation bills.** The general appropriation bill shall embrace nothing but appropriations for the expense of the executive, legislative, and judicial departments of the state, state institutions, interest on the public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

While the technicalities of this section are beyond the scope of this memorandum, it should be observed here that the attempt, in a general appropriation bill, to confer authority on a public official which previously did not exist, to establish a permanent policy, or to enact general legislation has been held to

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[14] *Sullivan v. Siegal*, 125 Colo. 544, 245 P.2d 800 (1952).

[15] *School District No. 16 v. Union High School District*, 25 Colo. App. 510, 139 P. 1039 (1914).

[16] See also *Dallas v. Redman*, 10 Colo. 297, 15 P. 397 (1887); *Edwards v. Denver & R.G.R. Co.*, 13 Colo. 59, 21 P. 1011 (1889); *Board of County Commissioners of Teller County v. Trowbridge*, 42 Colo. 449, 95 P. 554 (1908); *Board of County Commissioners of Pitkin County v. Aspen Mining & Smelting Co.*, 3 Colo.App. 223, 32 P. 717 (1893).

violate provisions of this type[17]. The one general subject of a general appropriation bill is "appropriations", and anything outside that subject -- anything not an appropriation -- is of no effect.

The second sentence of section 32, providing that appropriations in addition to those in the general appropriation act must be made by separate bills, each of which concerns a single subject, has been construed in a manner which is consistent with the construction of section 21; that is, it has been interpreted to mean that if an appropriation is necessary to accomplish the purpose of a bill and is incidental to its general subject, the appropriation may be included in the bill without violating the one-subject rule. It has usually been the practice in Colorado to include the words "and making an appropriation therefor" in the title of such a bill; this language furthers the policy of complete disclosure, although it is probably not constitutionally required.

Constitutional amendments - city charters - ordinances. Finally, the rules stated in article V, section 21, have been held not to apply to the proposal of constitutional amendments by the General Assembly;[18] to the submission to the citizens of amendments to a city charter under article XX of the Colorado Constitution;[19] or to municipal ordinances[20]. The constitutional provision applies to "bills", and bills are not required in any of these situations.

B. Section 17 - Original purpose rule

Section 17 of article V provides:

> 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.

In 1894 the Colorado Supreme Court stated that the controlling reason for section 17 was to carry out the provisions of article V, section 19, which at that time prohibited the introduction of bills, except the "long" appropriation bill, after the first fifteen days of the legislative session. If bills could be introduced during the prescribed period but amended later to accomplish unrelated aims, the policy behind section 19, namely, the desirability of securing ample time to consider all matters on which legislation is proposed, could be overridden. It might be argued that when the specific constitutional limit on the time for introducing bills was repealed in 1950, the reason for the original purpose rule disappeared or at least was weakened[21]. However, the 1950 amendment to section 19 authorized the general assembly to set time limits for the introduction of bills, and the policy of assuring enough time to give all measures due consideration is still valid. Accordingly, it is assumed that section 17 applies and that the objective of the original purpose rule, while altered in its specifics by the 1950 amendment to section 19, continues to be to discourage the hasty passage of unconsidered bills.

The relationship between the provisions of section 17 and section 21 of article V is a close one. It is

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[17] Ruud, *supra* note 4, at 424.

[18] *Nesbit v. People*, 19 Colo. 441, 36 P. 221 (1894).

[19] *People ex rel. Moore v. Perkin*, 56 Colo. 17, 137 P. 55 (1913).

[20] *Scanlon v. City of Denver*, 38 Colo. 401, 88 P. 156 (1906).

[21] It is noteworthy that only one case interpreting the original purpose rule has been decided by the Colorado Supreme Court since 1950. The Attorney General, however, has issued a number of opinions applying the rule since that time. See Part II of this memorandum.

revealing that several state constitutions require that a bill have no more than one "object" instead of the more common one-subject rule, and that the courts of those states have construed their one-object rules in a way which is almost identical to the manner of construing one-subject rules[22]. Thus, although the "purpose" or "object" of a bill seems to refer to what the bill is intended to accomplish, and its "subject" might be thought to be a more neutral concept, there has been in practice very little difference in the analysis of problems arising under the two sections. If an amendment which substitutes another concept for the original one causes the bill to violate the original purpose rule, that same amendment in the form of an addition to the bill instead of a substitution would cause it to violate the one-subject rule.

Example: Rep. X introduces his bill entitled "A bill for an act concerning an increase in the fee for motor vehicle safety inspections". If the bill is amended so as to add provisions governing the frequency of inspections, the bill violates section 21. If an amendment strikes everything below the enacting clause and substitutes the provisions on frequency of inspections, the original purpose of the bill is changed.

If Rep. X's bill is entitled "A bill for an act concerning motor vehicle safety inspections" but the increase in fees is the only matter treated in the bill as introduced, would the amendment concerning frequency of inspections change the original purpose?

The earliest case applying section 17 illustrates the simplest form of an original purpose problem. In 1886 the Colorado Supreme Court held that a bill whose original purpose was to create Logan County out of Weld County could not be amended so as to provide for a new Montezuma County from territory in LaPlata County[23]. Another early case involved an act whose title stated that the act was one "to Provide for the Payment of Salaries to Certain Officers, to Provide for the Disposition of Certain Fees, and to Repeal All Acts Inconsistent Therewith"[24]. Demonstrating the similarity of the analyses under sections 21 and 17, the Court first found that the act treated but one subject, namely, the compensation of certain public officers,[25] and that the provisions for disposition of fees were germane to that subject because they related to the source from which salaries would be paid. Then the Court concluded that the omission of certain fee provisions which were included in the bill as passed by the house of introduction did not change the original purpose of the bill, relying expressly on its finding that each provision of the bill continued to be germane to its general subject.

Controversy has occasionally arisen in this area over the amendment of bill titles. It is clear that a title can be amended without necessarily changing the original purpose of a bill;[26] indeed, some amendments to the substance of a bill may be of such a nature as to require corresponding amendments to the title in order to comply with the descriptive title rule. The General Assembly encounters particular problems with titles which are drafted in the form "Amending section(s) _____, Colorado Revised Statutes 1963", and so forth, since amendments to sections of the statutes other than those named in the title are often found to be necessary or desirable, and the deadline for the introduction of bills has passed. One decision has dealt with this problem and has resolved it using reasoning similar to that employed under section 21.

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[22] Ruud, *supra* note 4, at 394-396.

[23] *Creation of New Counties*, 9 Colo. 624, 21 P. 472 (1881).

[24] *Airy v. The People*, 21 Colo. 144, 40 P. 362 (1895).

[25] Does this title comply with that portion of section 21 which requires that the one general subject of a bill be clearly expressed in its title? The court did not consider the question.

[26] *In re Amendments of Legislative Bills*, 19 Colo. 356, 35 P. 917 (1894); *People v. Brown*, 174 Colo. 513, 485 P.2d 500 (1971).

In *In re Amendments of Legislative Bills*,[27] the Supreme Court was faced with a bill entitled "A bill for an act to amend section 124 of chapter 94". The subject of the bill and its purpose, which the Court assumed to be the same, were found to be the reduction of penalties and interest on delinquent taxes[28]. The second house amended sections of existing law other than those specified in the title but which dealt with the subject of the bill, and it wished to amend the title to cover the newly amended sections. The Court authorized the amendments to the bill and to the title, stating that the second house was keeping the subject and original purpose in mind and that the amendment of a title to cover the original purpose of the bill as extended was constitutionally valid.

One may infer from this decision and from decisions which analyze titles under section 21 that the purpose of a bill whose title takes the form "Amending section(s) _____" is to be discerned by looking to the substance of the amendment and the subject matter of the section amended, just as the subject of a bill "Repealing section _____" is the subject of the section repealed, not "repeal". In other words, the purpose of a bill "Amending section(s) _____" is not just to amend, but is to bring about some change in the way behavior is governed. Combining this analysis with the one made in an earlier portion of this memorandum, then, it follows that a title drafted in this form should bring two propositions to mind: First, that while a named section in a title will limit the subject of the bill, amendments to other sections which treat the same subject may be adopted without changing the original purpose of the bill; but second, that an existing section of the statutes may not be amended so as to treat matters having no necessary connection with the substance of that section. In amending bills having titles in this form, however, the mandate of the descriptive title rule should be observed by making appropriate amendments to the original title.

Example: Rep. X's bill is entitled "A bill for an act amending 13-5-114, Colorado Revised Statutes 1963, as amended, concerning motor vehicle safety inspections". The bill raises the inspection fee. The named section also includes provisions for purchase of inspection certificates from the department of revenue by licensed inspection stations. The bill could probably be amended to increase the price of inspection certificates without changing its original purpose. A harder question is whether the bill could be amended to increase the frequency of inspections, a subject now covered in section 13-5-113, on the theory that the general subject of the bill is expressed in the final clause of the title, namely, "motor vehicle safety inspections". Even if the title were amended so as to name the newly amended section, would this amendment change the original purpose of the bill?

If it were determined that the original purpose of the bill was to deal with inspection certificates, and that the inspection fee paid by a vehicle owner and the purchase price paid by the station are subdivisions of that subject, it is interesting to speculate whether the bill could be amended to repeal section 13-5-115 (5), which states that when a station's license is revoked, the department of revenue must refund the fees paid for unused certificates. If the title were amended to include a clause "and repealing 13-5-115 (5)", the bill would probably be constitutionally valid.

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[27] 19 Colo. 356, 35 P. 917 (1894).

[28] The determination of subject and purpose was facilitated in this case, since the bill was introduced in a short session where the only permissible subjects were designated in the governor's agenda.

WHAT IS GERMANE?

By Brenda Erickson
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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 is 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 substitute 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, and 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*, and 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 judgement to make a fair determination. Ultimately, the presiding officer must make the ruling.

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A Memo on Titles That Is a Good Guideline for Analyzing a Question about Whether an Amendment Fits under the Title of a Bill

MEMORANDUM

April 29, 1994

FROM: Office of Legislative Legal Services

RE: Senate Business Affairs and Labor Committee amendment to H.B. 94-1210, concerning a prohibition on restricting independent pharmacies by contracting with a single sole-source prescription drug provider

This is in response to your request for our opinion as to whether a portion of the Senate Business Affairs and Labor Committee's amendment to H.B. 94-1210 is within the title of the bill. The portion in question is the provision which would make it an unfair method of competition or unfair or deceptive act or practice in the business of insurance to restrict independent pharmacies by contracting with a single sole-source prescription drug provider. Also at issue is similar language which prohibits the health benefit plan advisory committee from recommending differential copayments for pharmaceutical services as a cost containment feature.

The title of H.B. 94-1210 reads, "CONCERNING MEASURES TO IMPROVE THE SYSTEM OF FINANCING HEALTH CARE COSTS USING ARRANGEMENTS WITH PRIVATE THIRD-PARTY PAYORS PURSUANT TO EXISTING MANDATORY COVERAGE PROVISIONS, ..."

Article V, section 21 of the Colorado Constitution provides that "No bill . . . shall be passed containing more than one subject, which shall be clearly expressed in its title; . . . ." Any matter not "germane" to the subject expressed in the title, which means anything not closely allied, appropriate, or relevant to that subject, is declared by the constitution to be void. *In re Breene*, 14 Colo. 401, 24 P. 3 (1890); *Roark v. People*, 79 Colo. 181, 244 P. 909 (1926).

Analysis of the title question focuses on whether the provisions added by the committee amendment are "pursuant to existing mandatory coverage provisions". The arguments on both sides of the issue are presented first.

Reasons why the amendment may be beyond the title. "Mandatory coverage provisions", in common terms, would include requirements that insurers cover certain diseases, conditions, or courses of treatment, or that they reimburse certain types of health care providers, or that they pay for certain health care products or services. Since virtually all health care policies cover purchases of prescription drugs, the amendment appears to mandate that most insurers cover such purchases in more circumstances than are presently required. In this sense, the amendment provides for a new mandated coverage and is not within existing mandatory coverage provisions.

This construction of "mandatory coverage provisions" is consistent with this office's interpretation of section 10-16-103, C.R.S., which requires special legislative procedures for bills which "mandate a health coverage or offering of a health coverage".

Furthermore, the original purpose of H.B. 94-1210 was probably to make health insurance more widely available and more usable. The amendment does not appear to further this purpose, in that it does not

affect the availability of insurance one way or the other.

Reasons why the amendment may be within the title. Read strictly, "mandatory coverage provisions" only means those statutes which require an insurer to cover specific diseases, conditions, products, or services. There is no requirement that prescription drugs be covered, and the amendment would not impose such a requirement. It simply regulates how a coverage, if offered, must be implemented or administered. Thus the amendment is within existing mandatory coverage provisions. If the committee amendment is not germane to "existing mandatory coverage provisions" under the arguments advanced above, neither is the provision of H.B. 94-1210 which restricts preexisting condition limitations.

If the original purpose of H.B. 94-1210 was to make health insurance more usable, the extension of coverage to any pharmaceutical provider is consistent with that purpose.

* * * * *

Both sets of arguments set forth above are convincing, and the question is an extremely close one. Since you have asked us to make a choice between these two sets of arguments, we would determine that the arguments that the amendment is beyond the title are more persuasive. Titles are construed strictly by the General Assembly, in the interests of more efficient management of the legislative process. Our office has been instructed by legislative leadership to draft tight titles in the absence of a contrary instruction from the bill sponsor. Construing titles narrowly furthers the purpose of article V, section 21, which is twofold: To prevent the insertion of enactments in bills which are not indicated by their titles, and to forbid the treatment of incongruous subjects in the same bill. *Geer v. Board of Comm'rs*, 97 F. 436 (8th Cir. 1899).

Accordingly, the construction which gives more respect to a narrow reading of a title should be adopted in a close case like this one. The portion of the committee amendment specified above would therefore be beyond the title. It should be noted, however, that courts have often applied title rules that are not as strict as those applied in the legislative process. If H.B. 94-1210 is enacted with this portion of the committee amendment included, a court would be required to accord the bill the presumption of constitutionality, and the court may well find that the requirements of the constitution are satisfied.

MEMORANDUM

January 15, 1997

TO: Office of Legislative Legal Services

FROM: Executive Committee of Legislative Council

RE: Use of Safety Clauses [Executive Committee Memo]

For bills prepared after this date, we are hereby directing your Office to implement the following procedures regarding **Safety Clauses**:

1. You should **no longer assume that members want a safety clause** on their bills. You should **ask each member** making a bill request **whether or not the member wants to include a Safety Clause.**

2. You 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, the period that is allowed for filing referendum petitions against such bills.

3. In view of the ninety-day requirement for bills without a safety clause, you should be sure to **inform the members**, particularly newly elected members, that **there are certain bills that may need to take effect on July 1 or before.** These could include bills imposing new criminal penalties and 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.

4. For bills that are prepared without a Safety Clause, you should include a standard clause that expresses an effective date for the bill in the context of the requirement for the ninety-day period, unless the member directs otherwise.

MEMORANDUM

February 13, 2009

TO: Members of the General Assembly

FROM: Office of Legislative Legal Services

RE: Use of Safety Clauses [OLLS Memo]

Pursuant to a directive from the Executive Committee, **we must ask you whether or not you want a safety clause on each bill that you request.** When answering this question for your bills, you should consider the following:

A bill with a safety clause:

- Is not subject to the citizens' right to file a referendum petition against all or any part of the bill.[1]

- Can take effect immediately after the Governor signs it or allows it to become law. This may be necessary for any bill that addresses a matter that constitutes an emergency, that requires an immediate change in the law, or that must take effect prior to or on the first day of a fiscal year (July 1).

A bill without a safety clause:

- Is subject to the citizens' right to file a referendum petition against all or any part of the bill. **The earliest date that this bill can take effect is the day after the expiration of the ninety-day period following adjournment of the General Assembly.** If a referendum petition is filed during that ninety-day period, the bill or part of the bill cannot take effect until approved by the voters at an even-year, state-wide election.

- Should contain a special effective date clause that indicates that the act is subject to petition and explains the alternative effective dates that will apply.[2]

Colorado court decisions indicate that the General Assembly's determinations regarding the appropriateness of the use of a safety clause for any particular bill is a matter that is within the sole discretion of the General Assembly. In recent years, there has been debate about the use of the safety clause, and some members have argued that the General Assembly should not use the safety clause as often as has previously been the case. You should be aware that there may be further discussions in the legislative process about your decision to include a safety clause.

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[1] The right is recognized in section 1 (3) of article V of the Colorado constitution.

[2] This clause contains the following headnote: "**SECTION 2. Act subject to petition - effective date.**"

LEGAL MEMORANDUM

TO: Interested Persons

FROM: Office of Legislative Legal Services

DATE: January 18, 2008

SUBJECT: Safety Clauses and Effective Date Clauses[1]

Executive Summary

The language of the safety clause is derived from an exception to the referendum power contained in section 1 (3) of Article V of the Colorado constitution. The exceptions are for: 1) Laws "necessary for the immediate preservation of the public peace, health, and safety"; and (2) Appropriations for the support and maintenance of the departments of state and state institutions.

Caselaw surrounding the utilization of the safety clause in legislation has held that the General Assembly may prevent a referendum to the people by declaring that an act is "necessary for the immediate preservation of the public peace, health, and safety" and that the General Assembly is vested with exclusive power to determine that question. 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.

From the mid-1930's until the mid-1990's, the inclusion of the safety clause was presumed. However, in January 1997, as a result of questions raised by legislators and the public, the Executive Committee of Legislative Council directed the Office of Legislative Legal Services to implement new procedures whereby a safety clause is included only upon direction of the requesting member. The 1997 directive requires the Office to advise members in connection with utilizing the safety clause depending on the type of legislation. The General Assembly may want to re-examine the

[1] This legal memorandum results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly. OLLS legal memoranda do not represent an official legal position of the General Assembly or the State of Colorado and do not bind the members of the General Assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

I. Background

At your request, this memo is being written to explain the origin of the safety clause, the case law on the use of the safety clause in legislative bills, the legislative practice on the use of the safety clause, and the consequences or drafting issues that arise when a safety clause is or is not used in a bill enacted by the General Assembly. The memo also discusses recent developments.

II. Origin of the Safety Clause

A safety clause is a clause placed at the end of a legislative bill. The text of the safety clause is 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, and safety.

The language of the safety clause is derived from an exception to the referendum power contained in section 1 (3) of Article V of the Colorado constitution. The use of a safety clause arises out of the provisions of subsections (1) and (3) of section 1 of Article V of the Colorado Constitution relating to the power of the people to use the referendum process against any act or portion of an act passed by the General Assembly. As originally adopted by the people, the Colorado Constitution vested the legislative power in the General Assembly and the General Assembly alone. In 1910, Colorado adopted an amendment to the state constitution that gave the people the right to propose laws (the right of the initiative) and the right to approve or reject the laws passed by the General Assembly (the right of the referendum).

Article V, section 1 (1) and (3), of the Colorado Constitution provide:

> **Section 1. General assembly - initiative and referendum.** (1) The legislative power of the state shall be vested in the general assembly consisting of a senate and house of representatives, both to be elected by the people, *but 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 and *also reserve power at their own option to approve or reject at the polls any act or item, section, or part of any act of the general assembly.*
>
> (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 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)

Subsections (1) and (3) provide for two types of referendum:

- The General Assembly may refer statutes to the voters in a statewide election by attaching a referendum clause to a bill;[2] or

- The voters may submit a petition to the Secretary of State signed by registered electors equal to five percent of the total number of votes cast for the Secretary of State in the previous general election[3] requesting a referendum vote against any act or item, section, or part of any act of the General Assembly.

The type of referendum exercised by the voters has been called a "rescission" referendum. In effect, it means that a specified number of registered electors can sign petitions and provide the electorate with the opportunity to *rescind* all or part of a statute.

Subsection (3) provides two exceptions to this "rescission" referendum:

- Laws "necessary for the immediate preservation of the public peace, health, and safety"; and

- Appropriations for the support and maintenance of the departments of state and state institutions.

III. Colorado Case Law on the Use of Safety Clauses

The case law in Colorado is well-settled that a legislative body may prevent a referendum to the people by declaring that the act is "necessary for the immediate preservation of the public peace, health, and safety" and that the legislative body is vested with exclusive power to determine that question. While the use of the safety clause is certainly a matter of debate in the legislative process by the individual members, once that question has been decided by the legislative body, that decision stands and the judiciary will not overturn it.

Specifically, in 1913, the Colorado Senate asked the Colorado Supreme Court whether the General Assembly could lawfully prevent a proposed act on the eight-hour law for persons employed in mines from being referred to the voters by the use of a safety clause declaring that the act was a law necessary for the immediate preservation of the public health and safety. In *In re Senate Resolution No. 4*, 54 Colo. 262, 130 P. 333 (1913), the Supreme Court held that the General Assembly had the authority under the constitutional language to make such a determination and that "such declaration is conclusive upon all departments of government, and all parties, in so far as it abridges the right to invoke the referendum."[4] The General Assembly passed the bill that was the subject of the interrogatory in *In re Senate Resolution No. 4*. Subsequently, the Supreme Court addressed the issue of whether the General Assembly could use the safety clause to except a bill from the referendum and whether the legislature or the judiciary had the authority to make this determination. In *Van Kleeck v. Ramer*, 62 Colo 4, 156 P. 1108 (1916), the

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[2] Such a bill is often referred to as a "referred bill".

[3] This number varies based upon the election. For 2007-08, the number of signatures required for a statewide initiative or referendum petition is 76,047.

[4] *In re Senate Resolution No. 4*, 54 Colo. 262, 271, 130 P. 333, 336 (1913).

Colorado Supreme Court noted that except as limited by the federal or the state constitutions, the authority of the General Assembly is plenary and the judicial branch cannot exercise any authority or power except that granted by the Constitution. The Supreme Court noted that under article V, section 1, the constitution provided that the power of the referendum may be ordered "except as to laws necessary for the immediate preservation of the public peace, health or safety". The Court held that during the process of the enactment of a law the legislature is required to pass upon all questions of necessity and expediency connected with a bill:

> The existence of such necessity is a question of fact, which the general assembly in the exercise of its legislative functions must determine; and under the constitutional provision...that fact cannot be reviewed, called in question, nor be determined by the courts....The general assembly has full power to pass laws for the purposes with respect to which the referendum cannot be ordered, and when it decides by declaring in the body of an act that it is necessary for the immediate preservation of the public peace, health or safety, it exercises a constitutional power exclusively vested in it, and hence, such declaration is conclusive upon the courts in so far as it abridges the right to invoke the referendum[5].

The Court responded to the argument that the people would be deprived of the right to refer a law, if the legislature either intentionally or through mistake, declares falsely or erroneously that a law is necessary for the immediate preservation of the public peace, health or safety. The Court said:

> The answer to this proposition is, that under the Constitution the general assembly is vested with exclusive power to determine that question, and its decision can no more be questioned or reviewed than the decisions of this court in a case over which it has jurisdiction[6].

The *Van Kleeck* case has been cited in four other Colorado cases involving the use of the public exception clause in municipal ordinances or actions taken by a governmental body.[7]

IV. Legislative Practice on Using the Safety Clause

Sometime in the mid-1930's, the use of the safety clause in bills became a regular practice of the General Assembly. The inclusion of the safety clause was presumed.

In the mid-1990's, questions were raised regarding the practice of the General Assembly in using the safety clause. The criticism generally was: That the General Assembly was preventing the right of the people to do rescission referendums; and that bills to which the General Assembly had attached a safety clause were not truly measures critical to the immediate preservation of the public peace, health, or safety.

Legislators also began asking the Office of Legislative Legal Services (hereafter the "Office") to not include safety clauses on their bills.

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[5] *Van Kleeck v. Ramer,* 62 Colo. 4, 10-11, 156 P. 1108, 1110 (1916).

[6] *Id.* at 11-12, 156 P. at 1111.

[7] *Fladung v. City of Boulder,* 160 Colo. 271, 417 P. 2d 787 (1966); *Enger v. Walker Field,* 181 Colo. 253, 508 P. 2d 1245 (1973); *McKee v. Louisville,* 200 Colo. 525, 616 P.2d 969 (1980); *Cavanaugh v. State, Dept. of Social Services,* 644 P. 2d 1 (Colo. 1982).

In January of 1997, the Executive Committee of Legislative Council directed the Office to implement a new procedure regarding safety clauses. A copy of the directive is attached. The directive, which has been continued to the present day, changed the default position of the Office from automatic inclusion of a safety clause to inclusion only upon direction of the requesting member. The directive requires drafters to specifically ask every member whether or not they want a safety clause. The practice of the Office has been to attempt to ask the question either when a legislator initially files the bill request with the Office or prior to putting the bill on billpaper for introduction.

V. Issues for Consideration in Using a Safety Clause under the Executive Committee's Directive

The decision to place a safety clause on a bill should not be made lightly. By exercising this exception, the General Assembly prevents the people from exercising their constitutional right to petition and vote on whether an act or a part of an act passed by the General Assembly should become law.

The 1997 directive directs the Office to inform the members to consider that some bills may require a safety clause if it is necessary for the bills to take effect on or before July 1.

Some of the drafting issues to be considered by a sponsor who elects to not use a safety clause on a bill include the following:

Does the bill have an effective date? As noted in the 1997 directive, in *In re Interrogatories of the Governor*, 66 Colo. 319, 181 P. 197 (1919), the Colorado Supreme Court held that, in order to allow the opportunity for filing a "rescission" referendum petition for ninety days after the legislative session, any bill without a safety clause could not take effect for ninety days. Because of that decision, the Office is directed to inform the member that if he or she wants to be sure that a bill adopted by the General Assembly and approved by the Governor would take effect prior to the ninety-first day after the session, the bill would need to have a safety clause.

This advice is based on the position that the holding in the case cited above means that a bill could not specify an effective date before or during the ninety-day period. The rationale for this position is that it would lead to absurd results if a bill was purported to become effective and have consequences imposed under the terms of the bill on one date only to have the bill become ineffective, pending an election, if a petition is filed.

Does a particular bill require a safety clause? The 1997 directive indicates that examples of bills that a member might consider necessary to take effect prior to the end of the ninety-day period following adjournment include bills that impose new criminal penalties 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.

What should the bill use in lieu of a safety clause? For bills that do not have a safety clause, the Office was directed to develop a series of standard clauses that express an effective day for the bill in the context of the ninety-day period to provide for certainty about when a bill takes effect. These effective date clauses build in the contingencies that might occur if a referendum petition is filed, if an election is held and approved by the people, and when the official declaration of the vote is proclaimed by the people.

For example, if a member elects to not have a safety clause and it is intended that the bill take effect *at the earliest possible date*, then the following general effective date clause is used in the bill:

> **SECTION __. Effective date.** This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general

> assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

The clause above may be customized to add an applicability clause or a statement that a bill takes effect on a specified fixed date subsequent to the expiration of the ninety-day period following adjournment.

VI. Recent Developments

In recent years, increased attention has been focused on the appropriateness of the use of safety clauses. This has particularly been the case when a safety clause is used solely for the purpose of having a bill take effect coincidentally with the start of a fiscal year that commences on July 1 following a legislative session. Accordingly, the General Assembly may want to direct that the Office re-examine the bill examples contained in the 1997 directive for the purpose of providing more appropriate and clearer assistance to the members when they are making their judgements about whether or not to include a safety clause.

As previously noted in this memorandum, court decisions indicate that the determinations made by the General Assembly regarding the appropriateness of the use of safety clauses are solely the prerogative of the body. However, since this issue has not been formally addressed since 1997, the General Assembly may also want to assess whether the 1997 directive has required this Office and the members to place sufficient emphasis on the fact that the use of a safety clause is in derogation of the right to seek a referendum petition.

MEMORANDUM
BILL TITLES - SINGLE SUBJECT AND ORIGINAL PURPOSE REQUIREMENTS

[Last Revision: November 20, 1997]

This memorandum is intended to provide guidance regarding the single subject and original purpose requirements for bills under the Colorado Constitution. This memorandum discusses the following topics:

I. The single subject and original requirements for bills and bill titles;

II. Factors that should be considered by the Colorado General Assembly when there is a question whether an amendment to a bill fits within the title of the bill; and

III. Title opinions.

I. SINGLE SUBJECT AND ORIGINAL PURPOSE REQUIREMENTS

(1) CONSTITUTIONAL REQUIREMENTS FOR BILL TITLES

Article V, sections 21 and 17 of the Colorado Constitution provide as follows:

> **Section 21. Bill to contain but one subject - expressed in title.** 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.
>
> **Section 17. No law passed but 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.

Sections 17 and 21 are constitutional rules of legislative procedure. The "subject" of a bill and its "original purpose" are similar concepts. An amendment that alters the original purpose of a bill may well cause the bill to embrace two subjects.

These sections of the Colorado Constitution mandate that each bill contain one subject and that the single subject be clearly expressed in the bill title. In addition, these provisions appear to place fairly strict limits on the types of extraneous amendments that may be added as a bill moves through the legislative process. It is generally agreed that the purpose of these provisions is to focus debate on pending legislative measures and to avoid "log-rolling" (the joining together of unrelated measures to gain votes for passage of a measure). Another purpose is to provide helpful public notice of the contents of a bill. The importance of these rules is illustrated by the constitutional requirement in Section 21 that failure to comply will invalidate the portion of a bill that is not expressed in the bill title.

Pursuant to these mandates, the Office of Legislative Legal Services (OLLS) has adopted a general

policy of composing bill titles in a manner that states the single subject at the beginning of the bill title. To help identify clearly a bill's single subject, a comma is often placed at the end of the subject. Another common practice is to avoid the words "and" and "or" in stating the single subject because these words connote more than one subject. Sometimes additional information is provided after the comma as a "trailer". While trailers must be "germane", or related, to the single subject, the words of the trailer generally are not part of the statement of the single subject.

The OLLS attempts to follow these practices as practicable. These practices have helped members and the public in the application of Sections 17 and 21 and have become generally accepted over a period of many years.

(2) "TIGHT" TITLES

Close adherence to the Colorado legislative custom and practice relating to composition and strict construction of bill titles has contributed to the time-honored practice of employment of "tight" titles. "Tight" titles narrowly express the single subject and purpose of a bill. Sponsors request tight titles anticipating that amendments that do not "fit" within the narrow statement will be deemed out of order during the legislative process. Of course, the tight titles themselves must comply with the mandates of Sections 17 and 21 of Article V.

(3) APPLICATION OF SECTIONS 17 AND 21 IN THE LEGISLATIVE PROCESS AND IN THE COURTS

The OLLS has observed that the requirements of Sections 17 and 21, and the attendant legislative customs and usage, are more often strictly applied in the legislative process. Since these rules are rules of legislative procedure, this seems entirely appropriate.

The courts apply Sections 17 and 21 in a different context than the General Assembly. The courts consider these provisions in legal proceedings after the presumption of constitutionality has attached to the enacted law in question. This has resulted in a more lenient application of the requirements of these sections in judicial proceedings. Only in the most extreme case will an enacted law be ruled unconstitutional by a court on this basis.

(4) CONSEQUENCES OF DEPARTURE FROM THE MANDATES OF SECTIONS 17 AND 21 AND LEGISLATIVE CUSTOM AND USAGE

If the constitutional mandates regarding bill subjects titles and the legislative custom and usage arising from these mandates are not observed in the legislative process, the consequences include:

- Loss of predictability in the consideration of bills;

- Frustration of the purposes of the constitutional mandates, such as focusing debate, avoiding log-rolling, and providing adequate public notice;

- Deprivation of a member's ability to address issues in a limited context through the use of a "tight" title;

- The possibility of increased litigation over bills already passed, with the attendant uncertainty of application of laws; and

- Erosion of the public's confidence in the legislative process.

It cannot be said with certainty in every case that departure from the rules will invalidate a bill. However, in view of the consequences outlined above, we recommend compliance with the rules and with the practices that encourage compliance with those rules. These practices have proven themselves over the long term and are rooted in the integrity of the legislative process.

II. DETERMINING WHETHER AMENDMENTS FIT WITHIN BILL TITLES

To determine whether an amendment fits within a bill title, the following questions should be addressed:

(1) DOES THE AMENDMENT FIT WITHIN THE SINGLE SUBJECT OF THE BILL EXPRESSED IN THE BILL TITLE?

Under the Colorado Constitution, no bill (other than a general appropriation bill) containing more than a single subject may be passed by the General Assembly, and the single subject of a bill must be expressed in the bill's title. Colo. Const., Art. V, § 21. If this provision of the Constitution is violated in an act, then the portions of the act that are not within the title are void. *People ex rel. Seeley v. Hull,* 8 Colo. 485, 9 P. 34 (1885). However, the Colorado Supreme Court has stated that this section of the Constitution should be liberally and reasonably interpreted so as to avert the evils against which it is aimed, while at the same time not unnecessarily obstructing legislation. *In re Breene,* 14 Colo. 401, 758 P.2d 1356 (1890).

In determining whether an amendment fits within the single subject expressed in the title of the bill, the following should be considered:

(a) IS THE AMENDMENT "GERMANE" TO THE SUBJECT MATTER OF THE BILL?

The Colorado Supreme Court has found that whether an amendment fits within the title of a bill is dependent on whether the amendment is "**germane**" to the subject expressed in the title of the bill. *Bd. of Comm'rs v. Bd. of Comm'rs,* 32 Colo. 310, 76 P. 368 (1904). The Court has further found that in this context "germane" means "**closely allied**", "**appropriate**", or "**relevant**". *Roark v. People,* 79 Colo. 181, 48 P.2d 1013 (1935); *Dahlin v. City & County of Denver,* 97 Colo. 239, 48 P.2d 1013 (1935). The Court has stated that if the matters contained in a bill are "**necessarily or properly connected to each other**", rather than being "**disconnected or incongruous**", then the provisions of Section 21 of the Constitution are not violated. *In re House Bill No. 1353,* 738 P.2d 371 (Colo. 1987).

(b) MAY THE TITLE OF THE BILL BE MODIFIED TO ACCOMMODATE THE AMENDMENT?

The title to a bill may be narrowed by amendment. If a bill title has been narrowed during the legislative process, then the practice and understanding in the General Assembly has been that the bill title may then be broadened by amendment as long as the amendment does not broaden the single subject or the original purpose of the bill as it was introduced.

The original subject matter of a bill, as expressed in the title of the bill, may not be broadened, although the title may be amended to cover the original purpose of the bill as extended by amendments. *In re Amendments of Legislative Bills,* 19 Colo. 356, 35 P. 917 (1894). This may mean that, while the subject of the bill expressed in the title may not be broadened, the trailer to the title, if any, may be modified when the bill is amended. In view of the constitutional implications that may arise if the single subject or original purpose of a bill is changed, the safest course of action is to avoid broadening the single subject of a bill expressed in the title, while making changes to the trailer as necessary to reflect changes made to the bill.

(2) WOULD THE AMENDMENT CHANGE THE ORIGINAL PURPOSE OF THE BILL AS IT WAS INTRODUCED IN THE GENERAL ASSEMBLY?

The Colorado Constitution prohibits any amendment that changes the **original purpose** of a bill. Colo. Const., Art. V, § 17. The courts have found that this provision does not prohibit an amendment that **extends the provisions of the bill** without changing the original purpose. *In re Amendments of Legislative Bills,* 19 Colo. 356, 35 P. 917 (1894). Further, an amendment to a bill does not violate this section if the amendment is **a change in the means of accomplishing** the bill's original purpose. *Parrish v. Lamm*, 758 P.2d 1356 (Colo. 1988).

(3) ARE THE CONSTITUTIONAL STANDARDS FOR AMENDMENTS APPLIED STRICTLY?

The General Assembly has normally applied the constitutional standards for amendments in a strict fashion, while the courts, when making similar determinations regarding laws that have been enacted, have shown deference to the judgment of the General Assembly. The presumption is that laws that have been enacted are constitutional, and a person who challenges the constitutionality of a statute must prove the unconstitutionality beyond a reasonable doubt. *People v. Rowerdink,* 756 P.2d 986 (Colo. 1988). For this reason, the final outcome reached by a court regarding an amendment should be considered within the appropriate context of the decision and not be applied directly to the legislative process.

EXAMPLES OF TITLE QUESTIONS:

Example 1: The bill title is “Concerning fruit.” and the bill as introduced deals with apples and pears. The amendment would add a provision concerning oranges. To determine whether the amendment fits within the title of the bill, it is necessary to determine whether oranges are germane to the subject of fruit and whether this amendment would change the original purpose of the bill. As oranges are a type of fruit, this amendment apparently is germane to the subject of the bill as expressed in the title. Oranges are closely allied with and relevant to the subject of fruit. Further, the addition of oranges appears to extend the provisions of the bill without changing the original purpose of the bill.

Result: The amendment fits within the title of the bill.

Example 2: The bill title is “Concerning apples.” and the bill as introduced deals only with apples. The amendment would add a provision concerning oranges. In this case, the question is whether oranges are germane to the subject “apples”. Oranges do not appear to be relevant to or closely allied with apples. The original purpose of the bill now regards the more narrow subject of apples, and the addition of oranges apparently will modify this original purpose, rather than simply extending the provisions of the bill or changing the means of accomplishing the original purpose.

Result: The amendment is not within the title of the bill.

Example 3: The bill title is “Concerning fruit, and, in connection therewith, providing for apples and peaches.” and the bill as introduced deals only with apples and peaches. The single subject expressed in the title is "Concerning fruit", while the remainder of the title is the trailer. The amendment would add a provision concerning oranges. Oranges appear to be germane to the bill subject as oranges are closely allied with and relevant to the subject of fruit. However, if the amendment is adopted, the original title may no longer accurately describe the subject matter of the bill unless the trailer to the title is also amended.

Result: The amendment is within the title of the bill. The trailer to the title may be modified to reflect the amendment, such as amending the trailer to read: "and, in connection therewith, providing for apples,

peaches, and oranges."

III. TITLE OPINIONS

In February of 1995, concern was expressed during a meeting of the Executive Committee of the Legislative Council about opinions of OLLS staff as to whether an amendment would be appropriate under the title of a bill. Discussion focused on the fact that asking for a title opinion may place OLLS staff in an awkward situation that is inappropriate for nonpartisan staff personnel. An OLLS staff member should bring any potential title issues to the attention of his or her team leader and Doug Brown or Becky Lennahan as soon as the issues arise.

The Executive Committee provided the OLLS with the following guidance concerning the issuance of title opinions:

1. An OLLS staff person should continue to consider title issues carefully when drafting bills and amendments and should advise a member when the member requests an amendment that may be beyond the title of a bill.

2. Once a bill or amendment is drafted, the OLLS staff should handle requests for title opinions as follows:

- An OLLS staff member may provide the member with an answer to a title questions, but the staff member should make it clear to the member that **the opinion is advisory only and is not binding on a committee chair or the chair of the committee of the whole.**

- An OLLS staff person should not put title opinions in writing unless the member insists. In this situation, the member should be advised that the OLLS will speak with the members of the Executive Committee from the member's house prior to writing the title opinion.

Note: This is an outline of a presentation by Alice Boler Ackerman for the OLLS in-house training program. The last presentation was made in the fall of 1997. The outline has been updated and is current as of September 1999.

STATUTORY LEGISLATIVE DECLARATION AND INTENT STATEMENTS: THE COLORADO PERSPECTIVE

- To Include or not Include - That is the Bill Drafter's Dilemma
  - There are no rules for including legislative declaration or legislative intent statements in the Colorado drafting manual but here are some "informal" rules.
    - A statement should not be characterized as "legislative intent" when it is really a "legislative declaration" and vice versa.
    - A legislative intent statement should accurately reflect the intent of the General Assembly and remain accurate as the bill is amended in the legislative process.
    - A legislative intent statement should not create any kind of right or prohibit any action and not otherwise create substantive law.
    - A legislative intent statement should not be ambiguous.
    - A legislative intent statement should not be a substitute for precise and accurate legislative bill drafting.
  - Read Legislative Lawyer article
  - Purpose of presentation
    - Make sure you understand the difference between legislative declaration and legislative intent statements and the different types of statements.
    - Think about whether legislative declaration sections are included in bills at the member's insistence or are you just in the habit of including them.
    - Think more about how to discourage members who are insisting on a legislative declaration or legislative intent statement.
    - Think more about the actual words used in legislative declarations - are they true or do you just think they are true -- do the words accurately reflect the G.A.'s intent.
    - Think about whether you are making substantive statements in a legislative declaration section or creating any kind of substantive right.

- Why Legislators ask for Legislative Declaration Statements or Legislative Intent Statements
  - Use facts to justify enactment of the bill and promote its passage
  - Provide a brief summary of the bill
  - Provide information to public and guide those who are to administer the law
  - If challenged constitutionally, set forth a justification that will stand up in court

- Legislative Declaration Statements vs. Legislative Intent Statements
  - Is there a difference?
    - Declaration
      - Dictionary definition - Explicit or formal statement or announcement
      - Statement of the reasons for a desired result
    - Intent

- Dictionary definition - That which is intended; aim; purpose; state of mind operative at the time of an action
- Statement of the desired result
- Is there a "real" difference?
  - Legislative declaration statements ("The general assembly hereby finds and declares . . .) occur more often in Colorado statutes than legislative intent statements. ("The general assembly intends . . ." or "It is the intent of the general assembly . . .): Approximately 550 references versus approximately 275 references
  - Most legislative intent statements are found under statutory sections titled "**Legislative declaration.**"
  - Sometimes legislative declaration statements are really legislative intent statements.

- Types of Legislative Declaration and Legislative Intent Statements
  - "Fluff" or "feel good" statements
    - Example: Establishment of state folk dance -- "joyful expression of the vibrant spirit of the people of the United States and the American people value the display of etiquette among men and women, which is a major element of square dancing"; "It is fitting that the square dance be added to the array of symbols of our state character and pride."
    - Inclusion as nonstatutory material
  - "Good public policy" or "goal" statements
    - Statements with "no teeth"
    - Examples:
      - Encourage non-English-speaking citizens to vote -- 1-1-103 (2), C.R.S. Question: Does making it easier to register really "encourage people to vote"?
      - Encourage attendance at baseball games by limiting liability -- 13-21-120 (2), C.R.S.
      - Right of homeless child to educational opportunities -- 22-1-102.5, C.R.S. Question: Is there really a need to single out the education of a homeless child? Not really - the problem here is that the state is required to offer all children a free public education - the law says a child goes to school in the school district in which she and her parents reside - if you are homeless you have no residence, so where do you go to school? - that is the problem the GA which trying to resolve - was there a need to explain that?
      - Privatization of government services not to result in diminished quality -- 24-50-501, C.R.S.
  - Substantive statements
    - Inclusion solely to show intent
      - Statements of what the general assembly did intend
      - Reinstatement of death penalty -- 16-11-801, C.R.S.
      - Extension of statute of limitations -- 13-80-103.7, C.R.S.
      - Statements of what the general assembly did not intend
      - Change of term "visitation" to "parenting time" -- 14-10-103 (3), C.R.S.
      - Funding for aviation -- 43-10-109 (2)(c), C.R.S.
    - Inclusion in anticipation of challenge in court case

- Residency requirements -- 8-2-120, C.R.S.
- Business incentives ("United Airlines") -- 24-46.5-101, C.R.S.
- Implementation of tax and spending limit -- 24-77-101, C.R.S.
- Inclusion in response to court cases
  - Funding of public assistance and welfare programs -- 26-1-126.5 and 2-4-215, C.R.S.
  - Statutory programs subject to available appropriation -- 2-4-216, C.R.S.
  - Applicability of statute of limitations for sexual offenses against children -- 16-5-401.1, C.R.S.
- Inclusion to show connection between special session call item and proposed bill
  - HB 91S2-1027 - funding of education and medicaid and changes in tax procedures
- Substantive statements usually are included as statutory material

- Role of Legislative Declaration and Legislative Intent Statements
  - Statutory provision clearly provides for their use when a statute is ambiguous
    - **Section 2-4-203. Ambiguous statutes - aids in construction.** (1) If a statute is ambiguous, the court, in determining the intention of the general assembly, may consider among other matters: (g) The legislative declaration or purpose.
  - Court decisions
    - Use of statements in construing scope and effect of 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". *St. Luke's Hosp. v. Industrial Comm'n*, 142 Colo. 28, 32, 349 P.2d 995, 997 (1960).
    - Use of statements in determining whether the statute promotes a public purpose
      - "Although the expressed intent of the legislature has no magical quality which validates the invalid, it is entitled to relevant weight in determining whether the Act promotes a public purpose." *Allardice v. Adams County*, 173 Colo. 133, 147, 476 P.2d 982, 989 (1970).
      - "We conclude that [section] 10-1-127 (1.5)(a) is a clear expression of public policy that is sufficient to support plaintiff's retaliatory discharge claim." *Flores v. American Pharmaceutical Services, Inc.*, 98CA0158 (July 8, 1999).
    - Weight to be given statements
      - "And, in construing statutes courts should ascertain and give effect to intention of the legislature as such is expressed in the statute itself and, conversely, courts should not interpret a law to mean that which it does not express. *People ex rel. Marks v. District Court*, 161 Colo. 14, 24, 420 P.2d 236, 241 (1966).
      - "Legislative intent which is clearly expressed must be given effect. *Pigford v. People*, 197 Colo. 358, 360, 593 P.2d 354, 356 (1979).
      - "While the statutory declaration [of the legislature] is relevant, it

is not binding". *City and County of Denver v. State of Colorado*, 788 P.2d 764, 768 (Colo. 1990).

- Weight to be given statements written subsequent to the statute itself
  - "While subsequent legislative declarations concerning the intent of an earlier statute are not controlling, they are entitled to significant weight." *People v. Holland*, 708 P.2d 119, 120-121 (Colo. 1985).

- Consideration of Specific Legislative Declaration or Legislative Intent Statements by Courts
  - Statements considered but disregarded by court
    - Residency requirements -- "In summary, we hold that the residency of the employees of a home rule municipality is of local concern. Thus, section 8-2-120 does not limit the authority of home rule municipalities to enact charter provisions or ordinances requiring employees to reside within the corporate limits of the municipality as a condition of continuing employment." *City and County of Denver v. State of Colorado*, 788 P.2d 764, 772 (Colo 1990)
  - Statements considered and given weight by court
    - Business incentives -- "The General Assembly has found that "the public purpose to be served by the passage of this article outweighs all other individual interests. On this record, and within this original proceeding, we cannot say that the General Assembly's determination of a predominating public purpose is either in bad faith or erroneous." *In re Interrogatory Propounded by Governor*, 814 P.2d 875, 884 (Colo. 1991).
    - Statute of limitations -- "We conclude that the specific and explicit statement of legislative intent in section 16-5-401.1 is sufficient to overcome the general presumptions relied on by the trial court . . .". *People v. Holland*, 708 P.2d 119, 121 (Colo. 1985).
    - Statute of limitations -- "We are satisfied that this specific expression of legislative intent . . . is sufficient to overcome the presumption of prospective operation." *People v. Midgley*, 714 P.2d 902, 903 (1986).
    - Property tax abatement and refund provisions -- "Under these circumstances, we conclude that, in amending 39-10-114 in 1988, the General Assembly intended to provide taxpayers the opportunity to utilize the abatement and refund provisions for the purpose of challenging an overvaluation." Portofino v. Bd. of Assessment Appeals, 820 P.2d 1157, 1160 (Colo. App. 1981).
  - Statements which create substantive rights
    - General rule is that a legislative intent statement does not confer power or determine rights (See Sutherland's Statutory Construction)
      - *Reproductive Health Services v. Webster* (U.S. Supreme Court - 1989) -- Supreme Court reviewed legislative findings in the preamble contained in the Missouri legislation: 1) "Life of each human being begins at conception" 2) "Unborn children have protectable interests in life, health and well-being" 3) "All Missouri laws must be interpreted to provide unborn children with the same rights enjoyed by other persons . . ."
      - Spawned strange cases probably unintended by the Missouri Legislature or the U.S. Supreme Court

- 2 separate cases brought to dismiss criminal trespass charges against anti-abortion demonstrators - under an 1981 law, persons accused of some crimes, including trespassing, may offer a defense that their actions were justified as an emergency measure to avoid an imminent public or private injury - demonstrators alleged actions were justified by the desire to save the lives of unborn children - charges were dismissed
- 20-year old charged with drunk driving argued he should be treated as a 21 year old because his actual age should be calculated from conception, not from birth - argument was rejected in circuit court but was appealed - don't know what happened
- Pregnant woman jailed for theft and forgery argued that she should be released since her fetus has been wrongfully imprisoned

- Civil rights -- "The relevant portions of that statute [24-34-801] confer new rights and duties, unknown at common law . . . *Silverstein v. Sisters of Charity,* 38 Colo. App. 286, 288, 559 P.2d 716 (1976)

- Rules from Other States on Use of Legislative Declaration and Legislative Intent Statements
  - North Dakota
    - Legislative intent statements "should not be used".
    - If bill is properly drafted, the intent is self-evident. Additionally, the declaration of finding or intent may be used for a purpose unintended by the drafter.
  - Wisconsin
    - Statement of legislative intent, purpose or findings "should not be included in a measure"
      - Redundancy
      - Conflict
      - Misuse of undefined terms
      - Unforseen effects
      - Misuse of argumentative language
    - Two exceptions
      - Recodifications - the usual presumption applied to legislation that amends a statute is that a change in statutory language implies an intentional change in substance. A statement of legislative intent or purpose is appropriate in a recodification bill to rebut this presumption
      - Constitutionality - following are instances in which statements may aid courts in determining that the challenged statutes had reasonable bases when the presumption of constitutionality alone is insufficient: 1) Where it is alleged that an act conflicts with a specific constitutional prohibition, the statement may recite facts that indicate the act's compliance with the constitutional requirements and indicate the legislative view concerning construction and application of constitutional provisions; and 2) Where it is alleged that an act is unreasonable or arbitrary, a statement may be used to show facts or policy that constitute a reasonable basis for the legislature's classification.
    - No statement of legislative intent, purpose, or findings may be included

in a bill without the approval of the chief counsel.

- Wisconsin's rules to use in drafting statements
  - Facts set forth in a statement of findings must either relate directly to an emergency condition necessitating a specific statute or, if more general, must not appear susceptible to significant change.
  - Statement of intent or purpose must not grant rights, prohibit actions, establish substantive standards or otherwise create substantive law.
  - Statement of intent or purpose must pertain only to the particular law in question and relate directly to that law.
  - Statement of intent or purpose must not be so narrowly drawn that it fails to address all of an act's clearly potential infirmities.
  - Language of statement of intent or purpose must not be equivocal or ambiguous.

- Conclusion

1-1-103. Election code liberally construed. (2) It is also the intent of the general assembly that non-English-speaking citizens, like all other citizens, should be encouraged to vote. Therefore, appropriate efforts should be made to minimize obstacles to registration by citizens who lack sufficient skill in English to register without assistance.

13-21-120. Colorado baseball spectator safety act - legislative declaration - limitation on actions - duty to post warning notice. (2) The general assembly recognizes that persons who attend professional baseball games may incur injuries as a result of the risks involved in being a spectator at such baseball games. However, the general assembly also finds that attendance at such professional baseball games provides a wholesome and healthy family activity which should be encouraged. The general assembly further finds that the state will derive economic benefit from spectators attending professional baseball games. It is therefore the intent of the general assembly to encourage attendance at professional baseball games. Limiting the civil liability of those who own professional baseball teams and those who own stadiums where professional baseball games are played will help contain costs, keeping ticket prices more affordable.

22-1-102.5. Definition of homeless child. (1) The general assembly hereby finds and declares that, because of the growing number of children and families who are homeless in Colorado, there is a need to ensure that all homeless children receive a proper education. It is the intent of the general assembly that no child shall be denied the benefits of a free education in the public schools because the child is homeless.

24-50-501. Legislative declaration. Recognizing that the adoption of section 20 of article X of the state constitution at the 1992 general election has imposed strict new constraints on state government, it is hereby declared to be the policy of this state to encourage the use of private contractors for personal services to achieve increased efficiency in the delivery of government services, without undermining the principles of the state personnel system requiring competence in state government and the avoidance of political patronage. The general assembly recognizes that such contracting may result in variances from legislatively mandated pay scales and other employment practices that apply to the state personnel system. In order to ensure that such privatization of government services does not subvert the policies underlying the civil service system, the purpose of this part 5 is to balance the benefits of privatization of personal services against its impact upon the

state personnel system as a whole. The general assembly finds and declares that, in the use of private contractors for personal services, the dangers of arbitrary and capricious political action or patronage and the promotion of competence in the provision of government services are adequately safeguarded by existing laws on public procurement, public contracts, financial administration, employment practices, ethics in government, licensure, certification, open meetings, open records, and the provisions of this part 5. Recognizing that the ultimate beneficiaries of all government services are the citizens of the state of Colorado, it is the intent of the general assembly that privatization of government services not result in diminished quality in order to save money.

16-11-801. Applicability of procedure for the imposition of sentences in class 1 felony cases. (1) It is the expressed intention of the general assembly that there be no hiatus in the imposition of the death penalty as a sentence for the commission of a class 1 felony in the state of Colorado as a result of the holding of the Colorado supreme court in *People v. Young*, 814 P.2d 834 (Colo. 1991). Toward that end, the provisions of section 16-11-103, as it existed prior to the enactment of Senate Bill 78, enacted at the Second Regular Session of the Fifty-sixth General Assembly, to the extent such provisions were not automatically revitalized by the operation of law, are reenacted as section 16-11-802 and are hereby made applicable to offenses committed on or after July 1, 1988, and prior to September 20, 1991.

(2) It is the intent of the general assembly that this part 8 is independent from section 16-11-103 and that if any provision of this part 8 or the application thereof to any person or circumstance is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the application of section 16-11-103 to any offense committed on or after September 20, 1991.

13-80-103.7. General limitation of actions - sexual assault or sexual offense against a child - six years. (3.5) (d) It is the intent of the general assembly in enacting this subsection (3.5) to extend the statute of limitations as to civil actions based on offenses described in subsection (1) of this section as amended on July 1, 1993, for which the applicable statute of limitations in effect prior to July 1, 1993, has not yet run on July 1, 1993.

(4) It is the intent of the general assembly in enacting this section to extend the statute of limitations as to civil actions based on offenses described in subsection (1) of this section for which the applicable statute of limitations in effect prior to July 1, 1990, has not yet run on July 1, 1990.

14-10-103. Definition and interpretation of terms. (3) On and after July 1, 1993, the term "visitation" has been changed to "parenting time". It is not the intent of the general assembly to modify or change the meaning of the term "visitation" nor to alter the legal rights of a noncustodial parent with respect to the child as a result of changing the term "visitation" to "parenting time".

43-10-109. Aviation fund created. (2) (c) It is not the intent of the general assembly that the money available for expenditure pursuant to the provisions of this subsection (2) be used to supplant any federal money which may be available to airports, governmental entities operating public-accessible airports, or the division pursuant to federal law.

8-2-120. Residency requirements prohibited for public employment - legislative declaration. (1) The general assembly hereby finds, determines, and declares

that the imposition of residency requirements by public employers works to the detriment of the public health, welfare, and morale as well as to the detriment of the economic well-being of the state. The general assembly further finds, determines, and declares that the right of the individual to work in or for any local government is a matter of statewide concern and accordingly the provisions of this section preempt any provisions of any such local government to the contrary. The general assembly declares that the problem and hardships to the citizens of this state occasioned by the imposition of employee residency requirements far outweigh any gain devolving to the public employer from the imposition of said requirements.

24-46.5-101. Legislative declaration. (1) The general assembly hereby finds and declares:

(a) That the health, safety, and welfare of the people of this state are dependent upon the continued encouragement, development, and expansion of opportunities for employment in the private sector in this state;

(b) That the economic history of this state has been characterized by a "boom and bust" cycle resulting in severe social and economic dislocation and dramatic fluctuation in economic activity and public revenues;

(c) That diversification of the state's economic base will contribute to much-needed economic stability;

(d) That it is vital to the continued development of economic opportunity in this state, including the development of new businesses and the expansion of existing businesses, that this state provide additional incentives to entities making a commitment to build and operate new business facilities which will result in substantial and long-term expansion of new employment within this state; and

(e) That the public purpose to be served by the passage of this article outweighs all other individual interests.

24-77-101. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Section 20 of article X of the state constitution, which was approved by the registered electors of this state at the 1992 general election, limits fiscal year spending of the state government;

(b) It is within the legislative prerogative of the general assembly to enact legislation which will facilitate the operation of section 20 of article X;

(c) It is a legislative prerogative to facilitate compliance with the state fiscal year spending limit and legislation to implement section 20 of article X as it relates to state government is a reasonable and necessary exercise of the legislative prerogative;

(d) In interpreting the provisions of section 20 of article X, the general assembly has attempted to give the words of said constitutional provision their natural and obvious significance;

(e) Where the meaning of section 20 of article X is uncertain, the general assembly has attempted to ascertain the intent of those who adopted the measure and, when appropriate, the intent of the proponents, as well as to apply other generally accepted rules of construction;

(f) The content of this article represents the considered judgment of the general assembly as to the meaning of the provisions of section 20 of article X as it relates to state government.

26-1-126.5. Effect of supreme court's interpretation of section 26-1-126, creating the county contingency fund for public assistance and welfare programs. The

general assembly hereby finds and declares that the Colorado supreme court decision entitled *Colorado Department of Social Services v. Board of County Commissioners of the County of Pueblo and Samuel J. Corsentino*, No. 83SA316, March 11, 1985, which interpreted section 26-1-126 to require the general assembly to fully fund the county contingency fund, leaving no discretion with the general assembly to determine annually the level of funding of said fund, has not been adopted by the general assembly. The general assembly specifically rejects this interpretation and any implication in such decision which would result in any state liability for amounts not appropriated for such fund in previous fiscal years.

2-4-215. Each general assembly a separate entity - future general assemblies not bound by acts of previous general assemblies. (1) The general assembly finds and declares, pursuant to the constitution of the state of Colorado, that each general assembly is a separate entity, and the acts of one general assembly are not binding on future general assemblies. Accordingly, no legislation passed by one general assembly requiring an appropriation shall bind future general assemblies.

(2) Furthermore, the general assembly finds and declares that when a statute provides for the proration of amounts in the event appropriations are insufficient, the general assembly has not committed itself to any particular level of funding, does not create any rights in the ultimate recipients of such funding or in any political subdivision or agency which administers such funds, and clearly intends that the level of funding under such a statute is in the full and complete discretion of the general assembly.

2-4-216. Limitations on statutory programs. (1) When the general assembly creates statutory programs which are not required by federal law and which offer and provide services or assistance or both to persons in this state, the general assembly gives rise to a reasonable expectation that such services or assistance or both will be provided by the state in a manner consistent with the statutes which created the programs. However, the general assembly does not commit itself or the taxpayers of the state to the provision of a particular level of funding for such programs and does not create rights in the ultimate recipient to a particular level of service or assistance or both. The general assembly intends that the level of funding, and thus the level of service or assistance or both, shall be in the full and complete discretion of the general assembly, consistent with the statute which created the program.

(2) In the statutes creating some of these programs, the general assembly expressly conditions any rights arising under such programs by the use of the words "within available appropriations" or "subject to available appropriations" or similar words of limitation. The purpose of the use of these words of limitation is to reaffirm the principles set forth in subsection (1) of this section.

(3) At the time such a program is created, the general assembly appropriates funds for its implementation, taking into account many factors, including but not limited to the availability of revenues, the importance of the program, and needs of recipients when balanced with the needs of recipients under other state programs. The amount of the initial appropriation indicates a program's priority in relation to other state programs. The general assembly reasonably expects that the priority of the program will be subject to annual changes which will be reflected in the modification of the annual appropriation for the program. If the general assembly desires a substantive change in the program, or to eliminate the program, that can be accomplished by amendment of the statutory law which created the program.

(4) It is the purpose of the general assembly, through the enactment of this section, to clarify that the rights, if any, created through the enactment of statutory programs are

subject to substantial modification through the annual appropriation process, so long as the modification is consistent with the statute which created the program.

16-5-401.1. Legislative intent in enacting section 16-5-401 (6) and (7). (1) The intent of the general assembly in enacting section 16-5-401 (6) and (7) in 1982 was to create a ten-year statute of limitations as to offenses specified in said subsections committed on or after July 1, 1979.

18-3-411. Sex offenses against children - unlawful sexual offense defined - limitation for commencing proceedings - evidence - statutory privilege. (2) No person shall be prosecuted, tried, or punished for an unlawful sexual offense other than the misdemeanor offense specified in section 18-3-404, unless the indictment, information, complaint, or action for the same is found or instituted within ten years after commission of the offense. No person shall be prosecuted, tried, or punished for a misdemeanor offense specified in section 18-3-404, unless the indictment, information, complaint, or action for the same is found or instituted within five years after the commission of the offense. The ten-year statute of limitations shall apply to all offenses specified in subsection (1) of this section which are alleged to have occurred on or after July 1, 1979.

Senate Bill 91-231

SECTION 1. Legislative declaration. The general assembly declares that Senate Bill No. 184 was enacted by the fifty-sixth general assembly in the second regular session with the intent of extending to any taxpayer the right to petition for an abatement or refund of property taxes levied erroneously or illegally due to an overvaluation of such taxpayer's property. In an opinion filed on February 7, 1991, the Colorado court of appeals stated that a more definitive statutory clarification was necessary for the general assembly to effectuate a change in the property tax scheme that would allow a taxpayer to petition for an abatement or refund for essentially all errors in valuation. The general assembly further declares that Senate Bill 91-231 was enacted by the fifty-eighth general assembly in its first regular session with the intent of clarifying that said statutory interpretation by the Colorado court of appeals was incorrect and that said right has existed since the enactment of Senate Bill No. 184 and shall continue to exist.

24-34-801. Legislative declaration. (1) The general assembly hereby declares that it is the policy of the state:

(a) To encourage and enable the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment;

(b) That the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled shall be employed in the state service, the service of the political subdivisions of the state, the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied unless it is shown that the particular disability prevents the performance of the work involved;

(c) That the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled have the same rights as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places;

(d) That the blind, the visually impaired, the deaf, the partially deaf, and the otherwise physically disabled are entitled to full and equal housing and full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes,

motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation, hotels, motels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, including restaurants and grocery stores; and that the blind, the visually impaired, the deaf, the partially deaf, or the otherwise physically disabled person assume the liability for any injury that he or she might sustain which is attributable solely to causes originating with the nature of the particular disability involved and otherwise subject only to the conditions and limitations established by law and applicable alike to all persons;

(e) That every totally or partially blind person, every totally or partially deaf person, or any otherwise physically disabled person shall have the right to be accompanied by a guide dog, a service dog, or other dog, which dog is especially trained or is being trained by a qualified trainer for the purpose of aiding any such person, in any of the places listed in paragraph (d) of this subsection (1) without being required to pay an extra charge for any such dog; except that he shall be liable for any damage done to the premises or facilities by such dog. Any qualified trainer who is training a dog for use by a totally or partially blind, totally or partially deaf, or physically disabled person shall also have the right to be accompanied by such dog in the same manner and with the same liability as the disabled person; except that such a qualified trainer shall not have the right to be accompanied by a guide or service dog if the dog presents an imminent danger to the public health or safety. Any dog being trained for the purpose of aiding a disabled person shall be visibly and prominently identified as a guide or service dog in training.

(f) That no person who is totally or partially blind, totally or partially deaf, or otherwise physically disabled and who is the owner of a guide dog, service dog, or other dog trained for the purpose of aiding such person shall be required to pay an annual license fee for such dog.

10-1-127. Fraudulent insurance acts - immunity for furnishing information relating to suspected insurance fraud - legislative declaration. (1.5) (a) The general assembly finds and declares that insurance fraud is expensive. Insurance fraud increases premiums and places businesses at risk. Insurance fraud reduces consumers' ability to raise their standard of living and decreases the economic vitality of this state. The general assembly further finds and declares that the state of Colorado must aggressively confront the problem of insurance fraud by facilitating the detection of and reducing the occurrence of fraud through stricter enforcement and deterrence and by increasing the partnership among consumers, the insurance industry, and the state in coordinating efforts to combat insurance fraud.

(b) Colorado has addressed insurance fraud in various statutes, including but not limited to the civil and administrative provisions found in this section, section 10-4-708.6, part 4 of article 2 of this title, parts 1, 2, 9, and 11 of article 3 of this title, and numerous other provisions of this title. It has also been addressed in criminal provisions found in parts 1, 2, and 3 of article 2 of title 18, part 1 of article 4 of title 18, part 1 of article 5 of title 18, and section 18-5-205, C.R.S. These statutory provisions impose regulatory oversight and severe civil and criminal penalties on authorized and unauthorized insurance companies and other persons who commit insurance fraud. The purpose of this section is to further improve regulatory oversight of licensed persons who commit insurance fraud and provide additional remedies to aggrieved persons.

HOUSE BILL 13-1029

BY REPRESENTATIVE(S) Levy and Gardner, Labuda, Murray, Waller, Buckner, Court, Exum, Fields, Gerou, Hullinghorst, Kagan, Landgraf, Lawrence, Lebsock, McLachlan, Melton, Mitsch Bush, Pabon, Salazar, Schafer, Williams, Ferrandino;
also SENATOR(S) Roberts and Schwartz, Brophy, Morse, Aguilar, Hudak, Newell, Steadman.

CONCERNING THE USE OF AUTHORITY VERBS IN THE COLORADO REVISED STATUTES.

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

SECTION 1. Legislative declaration. (1) The general assembly hereby:

(a) Finds that:

(I) Courts presume that, in the absence of any manifest indication to the contrary, the meaning attributed to the words used in one part of the statutes should be ascribed to the same words found elsewhere in the statutes; and

(II) Many statutes have been written in the passive voice and future tense, including the use of the word "shall" as a future tense verb;

(b) Determines that:

(I) Drafting statutes, when possible, in the active voice and present tense will clarify the general assembly's intent; and

(II) In order to clarify the general assembly's use of the authority verbs "must" and "shall", it is useful to use different words to distinguish between:

(A) The imposition of a duty on a person; and

(B) The creation of a condition to which a person or thing is subject but as to which there is no duty to act; and

(c) Declares that:

(I) Passage of this act is not intended to alter the interpretation of a statute enacted before the effective date of this act; and

(II) While this act creates standard definitions of the words "must" and "shall", the determination of the proper meanings to be attributed to the words "must" and "shall" should include consideration of the context in which those words were enacted and are used.

SECTION 2. In Colorado Revised Statutes, 2-4-401, **add** (6.5) and (13.7) as follows:

2-4-401. Definitions. The following definitions apply to every statute, unless the context otherwise requires:

(6.5) (a) "MUST" MEANS THAT A PERSON OR THING IS REQUIRED TO MEET A CONDITION FOR A CONSEQUENCE TO APPLY. "MUST" DOES NOT MEAN THAT A PERSON HAS A DUTY.

(b) THIS SUBSECTION (6.5):

(I) IS NOT INTENDED TO ALTER THE INTERPRETATION OF A STATUTE ENACTED BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (6.5); AND

(II) APPLIES TO STATUTES ENACTED ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (6.5) BUT ONLY WITH REGARD TO LANGUAGE THAT APPEARS IN SMALL CAPITAL FONT IN THE SESSION LAWS PUBLISHED PURSUANT TO SECTION 24-70-223, C.R.S.

(13.7) (a) "SHALL" MEANS THAT A PERSON HAS A DUTY.

(b) THIS SUBSECTION (13.7):

(I) IS NOT INTENDED TO ALTER THE INTERPRETATION OF A STATUTE ENACTED BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (13.7); AND

(II) APPLIES TO STATUTES ENACTED ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (13.7) BUT ONLY WITH REGARD TO LANGUAGE THAT APPEARS IN SMALL CAPITAL FONT IN THE SESSION LAWS PUBLISHED PURSUANT TO SECTION 24-70-223, C.R.S.

SECTION 3. 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 (August 7, 2013, if adjournment sine die is on May 8, 2013); 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 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Guidelines for When to Update Statutes Regarding the Present Tense, Active Voice, and Authority Verbs

1. The determination of whether to update[8] existing statutory language is primarily one for the attorney drafting the bill to make. If updating seems advisable under section 4 but the drafter has not updated a statute, a revisor should raise the issue with the drafter and should consider whether to include the updates in the current version of the bill or the next draft of the bill.
   a. LAs do not need to suggest updates to bills.
   b. LAs should raise a concern if they notice conflicting updates between bills or within a bill.

2. The attorney should comply with the drafting manual[9] concerning the use of the present tense, active voice, and authority verbs (unless doing so is likely to create ambiguity) when a bill adds:
   a. An entirely new subdivision of law; or
   b. An entirely new sentence within an existing subdivision of law. In doing so, the attorney should consider whether the rest of the subdivision should be updated - *see* section 4.

3. Do not update a subdivision of law that is not already in a bill for other, substantive reasons. This does not prevent:
   a. Updating an introductory portion of law that is not otherwise being amended and therefore wouldn't otherwise be in the amending clause.
   b. Updating an entire section or other multi-part subdivision of law if doing so is helpful for other reasons, for example, most of the subdivisions of the section or subdivision are already being amended or it's important to show the context of the section or subdivision.

4. In determining whether to update existing statutory language, an attorney should consider:
   a. Whether updating the language is likely to create ambiguity or have any substantive effect.
   b. Whether the existing language has been construed by case law. If so, the attorney should not update the language unless doing so would clearly not affect the reasoning or result of the case.
   c. Whether the existing language relates to a particularly sensitive issue. If so, the language should probably be left alone.
   d. Whether the sponsor of the bill or the committee where it will probably be heard are likely to be concerned with each and every statutory change.
   e. The resulting work load on the publication and bill production processes, including on LAs, revisors, and the pub team. Updating in a 5- or 10-page bill

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[8] For purposes of these guidelines, "update" means to amend an existing statute to make it comply with the drafting manual concerning the use of the present tense, active voice, and authority verbs (that is, "shall", "may", "must", and "need").

[9] Refer to the drafting manual, pages 5-15 through 5-19.

has a very different impact than doing so in a 50-page bill. Updating sections of law that are in the bill only as conforming amendments may be unduly burdensome if there are many conforming amendments.

Guidelines for the Use of "Shall" and "Must"

The easiest way to approach this word choice is to first try following the drafting manual regarding the use of "shall". If using the phrase "has a duty to" doesn't make sense (considering the exception for the use of the passive voice), then don't use "shall". "Must" is a possibility, but you should consider whether you really need to use an authority verb.

Excerpt from Drafting Manual

If the words in quotes from the right-hand column below convey your intended meaning, then use the word or words from the left-hand column.

shall = a person "has a duty to" (*but see* paragraph (a)(I)(C) below regarding the passive voice)

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.

(a) (I) (C) *In the passive voice*. . . . If you use 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", even though the subject of the sentence is a thing. . . .

Step-by-step Analysis

1. Figure out whether the **subject** of your sentence is a **person** or a **thing** (remember that the statutory definition of "person", §2-4-401 (8), C.R.S., includes entities).
2. Figure out whether there is or should be a **duty** or only a **condition.**
   a. Things can't have duties, only people can.
   b. A duty is something that a court will enforce, for instance, by applying a penalty or entering an injunction.
   c. A condition is simply a prerequisite for a consequence to apply. A court will not apply a penalty or enter an injunction to require a person or thing to meet the condition, but may determine that a consequence does or doesn't apply.
3. If the subject is a person and:
   a. There is a duty, use "shall".
   b. There is not a duty, use "must" or another present-tense verb. Think outside the box: is this even an authority verb issue? Can I express this better with another present-tense verb?
4. If the subject is a thing:
   a. First, figure out whether your sentence is **active** or **passive** voice (try to use active voice).
   b. In the active voice, "shall" is not an option because a thing can't have a duty. Use "must" or another present-tense verb.
   c. In the passive voice, if the **object** of the sentence is a person who has a duty, use "shall".

<table>
<tr><td colspan="2">Person</td><td colspan="2">Thing</td><td rowspan="3"></td></tr>
<tr><td colspan="2">Is There a Duty?</td><td colspan="2">Is There a Duty?</td></tr>
<tr><td>No</td><td>Yes</td><td>No</td><td>Yes</td><td>Voice</td></tr>
<tr><td rowspan="2">Don't use "shall"
Maybe use "must"</td><td rowspan="2">Use "shall"</td><td rowspan="2">Don't use "shall"
Maybe use "must"</td><td>Use "shall"</td><td>Passive</td></tr>
<tr><td>(Can't be a duty)
Don't use "shall"
Maybe use "must"</td><td>Active</td></tr>
</table>

Canned Language

CREATING CASH FUNDS

When creating a cash fund, take the following steps:

1. Create the cash fund.

THE [NAME OF FUND] [OPTIONAL: REFERRED TO IN THIS [C.R.S. SUBDIVISION] AS THE "FUND"] IS HEREBY CREATED IN THE STATE TREASURY.

2. Identify the money to be credited to the cash fund as principal.

THE FUND CONSISTS OF MONEY [Optional: Identify the money specifically as *e.g.,* fees, fines, charges, gifts, grants, and donations, etc.] CREDITED TO THE FUND PURSUANT TO [C.R.S. SUBDIVISION] AND ANY OTHER MONEY THAT THE GENERAL ASSEMBLY MAY APPROPRIATE OR TRANSFER TO THE FUND.

3. Specify what happens to cash fund interest and any other investment income. Under section 24-36-114 (1), C.R.S., all interest is credited to the general fund unless "otherwise expressly provided by law."

- **Interest and income remains in the cash fund:**

THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE [NAME OF FUND] TO THE FUND.

- **Interest and income is credited to the general fund.** Because section 24-36-114 (1), C.R.S. only refers to interest and not to other forms of investment income, it is better to specify this even though it would likely happen anyway:

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.

- **Interest and income is credited to another cash fund.** This is uncommon but sometimes occurs:

THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE [NAME OF FUND] TO THE [NAME OF OTHER FUND].

4. If necessary, specify what happens to unexpended and unencumbered money in the fund at the end of a fiscal year.

- **Money stays in the cash fund:**

No additional language is necessary. This is what happens by default.

- **Money reverts to the general fund:**

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.

- **Money is transferred to another cash fund.** This is uncommon but sometimes occurs.

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].

5. Specify the purposes for which money in the cash fund may be used. Either a general description of purposes [*e.g.,* "FOR THE IMPLEMENTATION OF THIS [C.R.S. SUBDIVISION]" or "FOR THE PURPOSES OF THE [NAME OF PROGRAM]] or a specified detailing of the purposes may be appropriate.

- **Money subject to annual appropriation.** Use this option unless specifically asked not to**:**

SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY, THE [NAME OF ENTITY] MAY EXPEND MONEY FROM THE FUND FOR [SPECIFIED PURPOSE(S)].

- **Money continuously appropriated.** Use this option only if specifically asked to do so:

MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE [NAME OF ENTITY] FOR [SPECIFIED PURPOSE(S)].

- **Special language for a trust fund from which it is prohibited to spend principal:**

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)].

6. If necessary, specify an exemption from any applicable maximum reserve limitation. If the bill sponsor wishes to exempt the cash fund from an otherwise applicable maximum reserve limitation that is established in or as permitted by section 24-75-402, C.R.S., add a new paragraph to section 24-75-402.5 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. SUBDIVISION].

7. If the cash fund is temporary in nature, specify what happens to any money in the fund when it is repealed.

THE STATE TREASURER SHALL TRANSFER ALL UNEXPENDED AND UNENCUMBERED MONEY IN THE FUND ON [DATE THE FUND IS REPEALED] TO THE [NAME OF FUND (usually the general fund)].

AUTHORITY TO USE MONEY IN STATE EDUCATION FUND

Qualifying for State Education Funds

To qualify for money from the state education fund a program must fit within one of the categories specified in Art IX, sec. 17 (4)(b) of the state constitution. That section is included here to show which options are specifically allowed:

> **Section 17. Education - Funding.** (4) (b) In state fiscal year 2001-2002, and each fiscal year thereafter, the general assembly may annually appropriate monies from the state education fund. Monies in the state education fund may only be used to comply with subsection (1) of this section and **for accountable education reform, for accountable programs to meet state academic standards, for class size reduction, for expanding technology education, for improving student safety, for expanding the availability of preschool and kindergarten programs, for performance incentives for teachers, for accountability reporting, or for public school building capital construction.** (emphasis added)

In most cases the General Assembly authorizes a program to receive state education fund money by passing a statutory legislative declaration that specifies how the program fits into one or more of the use categories.

(_) THE GENERAL ASSEMBLY DECLARES THAT, FOR PURPOSES OF SECTION 17 OF ARTICLE IX OF THE STATE CONSTITUTION, [NAME OF THE PROGRAM OR DESCRIPTION OF THE CHANGE TO BE FUNDED WITH SEF MONEY] IS AN IMPORTANT ELEMENT IN IMPLEMENTING [ONE OR MORE AUTHORIZED CATEGORIES FROM ART. IX, SEC. 17] AND MAY THEREFORE RECEIVE FUNDING FROM THE STATE EDUCATION FUND CREATED IN SECTION 17 (4) OF ARTICLE IX OF THE STATE CONSTITUTION.

CRIMINAL SURCHARGES/FEES FUNDING MECHANISM

See articles 19, 21, 22, and 24 in title 18

Elements of statutory sections establishing criminal surcharges (one section for each of the following components, all within a part of the general criminal surcharge article to be created in title 18):

- A statutory legislative declaration to identify the crime for which a surcharge is being

created, explain why the crime deserves a surcharge, and state the GA's intent in establishing the surcharge. This section would be numbered as "18-__-_01."

18-xx-101. Legislative declaration. THE GENERAL ASSEMBLY FINDS THAT THE COMMISSION OF SEX OFFENSES EXACTS AN UNACCEPTABLE TOLL ON THE FISCAL RESOURCES OF BOTH STATE AND LOCAL GOVERNMENT AND THEREBY INCREASES THE FISCAL BURDEN UPON THE TAXPAYERS OF THIS STATE. IT IS THE INTENT OF THE GENERAL ASSEMBLY....

- A definitions section identifying terms used in relation to establishing, collecting, and disbursing the surcharge. This section would be numbered as "18-__-_02."

18-xx-102. Definitions. AS USED IN THIS ARTICLE __, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "CONVICTION" MEANS....

(2) "SEX OFFENSE" MEANS...

- A section assigning surcharge amounts for all classes of felony and misdemeanor offenses identified and appearing in the article, creating a fund for the surcharge amounts, and authorizing how the money is disbursed in percentages. This section would be numbered as "18-__-_03." Note: The surcharge fund may be created in a separate section.

18-xx-_03. Source of revenues - allocation of money. (1) ON AND AFTER [DATE], EACH PERSON WHO IS CONVICTED OF, OR RECEIVES A DEFERRED SENTENCE FOR, A [SPECIFY TYPE OF OFFENSE] OFFENSE SHALL PAY A SURCHARGE TO THE CLERK OF THE COURT IN WHICH THE CONVICTION OCCURS OR IN WHICH THE DEFERRED SENTENCE IS ENTERED. THE SURCHARGE IS IN THE FOLLOWING AMOUNTS:

(a) FOR EACH CLASS 2 FELONY OF WHICH A PERSON IS CONVICTED, [AMOUNT] DOLLARS;

(b) FOR EACH CLASS 3 FELONY OF WHICH A PERSON IS CONVICTED, [AMOUNT] DOLLARS;

(c) FOR EACH CLASS 4 FELONY OF WHICH A PERSON IS CONVICTED, [AMOUNT] DOLLARS;

(d) FOR EACH CLASS 5 FELONY OF WHICH A PERSON IS CONVICTED, [AMOUNT] DOLLARS;

(e) FOR EACH CLASS 6 FELONY OF WHICH A PERSON IS CONVICTED, [AMOUNT] DOLLARS;

(f) FOR EACH CLASS 1 MISDEMEANOR OF WHICH A PERSON IS CONVICTED, [AMOUNT] DOLLARS;

(g) FOR EACH CLASS 2 MISDEMEANOR OF WHICH A PERSON IS CONVICTED, [AMOUNT] DOLLARS;

(h) FOR EACH CLASS 3 MISDEMEANOR OF WHICH A PERSON IS CONVICTED, [AMOUNT] DOLLARS.

<{***Note: Only include those penalty levels that apply to the offense selected for a surcharge.***}>

(2) ON AND AFTER [DATE], EACH JUVENILE WHO IS ADJUDICATED OR RECEIVES A DEFERRED ADJUDICATION FOR COMMISSION OF AN OFFENSE THAT WOULD CONSTITUTE [THE OFFENSE] IF COMMITTED BY AN ADULT SHALL PAY A SURCHARGE TO THE CLERK OF THE COURT IN WHICH THE ADJUDICATION OCCURS OR IN WHICH THE DEFERRED ADJUDICATION IS ENTERED. THE AMOUNT OF THE SURCHARGE IS [CHOOSE ONE: THE SAME AS OR A

SPECIFIED % OF] THE AMOUNT THAT WOULD BE ASSESSED AGAINST AN ADULT OFFENDER PURSUANT TO SUBSECTION (1) OF THIS SECTION FOR COMMISSION OF THE OFFENSE.

(3) THE CLERK OF THE COURT SHALL ALLOCATE THE SURCHARGE REQUIRED BY THIS SECTION AS FOLLOWS:

(a) THE CLERK SHALL RETAIN [NUMBER] PERCENT FOR ADMINISTRATIVE COSTS INCURRED PURSUANT TO THIS SUBSECTION (3) AND SHALL TRANSMIT THE AMOUNT RETAINED TO THE STATE TREASURER, WHO SHALL CREDIT IT TO THE GENERAL FUND. THE AMOUNT IS SUBJECT TO APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE COSTS OF ADMINISTERING THIS SECTION.

(b) THE CLERK SHALL TRANSFER [NUMBER] PERCENT TO THE STATE TREASURER WHO SHALL CREDIT THE AMOUNT TO THE [NAME OF SURCHARGE FUND CREATED PURSUANT TO SUBSECTION (4) OF THIS SECTION TO RECEIVE SURCHARGE AMOUNTS].

(4) ***<{ Here, create a surcharge fund in the state treasury into which the money transferred under (3)(b) can be deposited. Use canned language for creation of new funds. Specify how money in the surcharge fund is disbursed: (1) by whom, (2) to whom, and (3) for what purposes. Note: You may want to create a separate section for disbursement if the surcharge program includes new program(s) and reporting requirements.}>***

(5) IF THE COURT FINDS THAT A DEFENDANT IS INDIGENT, THE COURT MAY WAIVE ALL OR A PORTION OF THE SURCHARGE REQUIRED BY THIS SECTION. IF THE COURT FINDS THAT A DEFENDANT IS FINANCIALLY UNABLE TO PAY ALL OR A PORTION OF THE SURCHARGE, THE COURT MAY WAIVE THAT PORTION OF THE SURCHARGE THAT THE COURT FINDS THE DEFENDANT IS FINANCIALLY UNABLE TO PAY.

FINGERPRINT BACKGROUND CHECKS

(__) WITH THE SUBMISSION OF AN APPLICATION FOR A LICENSE GRANTED PURSUANT TO THIS [C.R.S. SUBDIVISION], EACH APPLICANT SHALL SUBMIT A COMPLETE SET OF HIS OR HER FINGERPRINTS TO THE [NAME OF ENTITY]. THE [NAME OF ENTITY] SHALL SUBMIT THE FINGERPRINTS TO THE COLORADO BUREAU OF INVESTIGATION FOR THE PURPOSE OF CONDUCTING FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECKS. THE COLORADO BUREAU OF INVESTIGATION SHALL FORWARD THE FINGERPRINTS TO THE FEDERAL BUREAU OF INVESTIGATION FOR THE PURPOSE OF CONDUCTING FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECKS. THE [NAME OF ENTITY] MAY ACQUIRE A NAME-BASED CRIMINAL HISTORY RECORD CHECK FOR AN APPLICANT OR A LICENSE HOLDER WHO HAS TWICE SUBMITTED TO A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK AND WHOSE FINGERPRINTS ARE UNCLASSIFIABLE. THE STATE LICENSING AUTHORITY OR LOCAL JURISDICTION SHALL USE THE INFORMATION RESULTING FROM THE FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK TO INVESTIGATE AND DETERMINE WHETHER AN APPLICANT IS QUALIFIED TO HOLD A STATE OR LOCAL LICENSE PURSUANT TO THIS [C.R.S. SUBDIVISION]. THE [NAME OF ENTITY] MAY VERIFY THE INFORMATION AN APPLICANT IS REQUIRED TO SUBMIT. THE APPLICANT SHALL PAY THE COSTS ASSOCIATED WITH THE FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK TO THE COLORADO BUREAU OF INVESTIGATION.

<{This last sentence is an example of how to cover the cost of the check. The drafter should check that this is how the sponsor wants the cost to be covered.}>

GIFTS, GRANTS, OR 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)]."

ELEMENTS OF A GRANT OR SCHOLARSHIP PROGRAM

(Basic template for program creation is located at the end of this file.)

For examples of grant or scholarship programs in general, see:
- Teacher Development Grant Program, §22-7-701 et seq.
- Summer School Grant Program, §22-7-801 et seq.
- Early Literacy Grant Program, §22-7-1211.
- School Turnaround Leaders Development Fund, §22-13-101 et seq.
- Tony Grampsas Youth Services Program, §§26-6.8-102 and 26-6.8-103.

Where will you locate the program in statute?
- Within one section? *(Not preferred unless program is very simple and straightforward.)*
- Create a new part within an existing article?
- Create a new article?

Short title? *(optional)*

Legislative declaration? *(optional, but usually included)*
- Statutory or non-statutory?
  (If nonstatutory, make it Section 1 of the bill. If included in statute, place it before definitions.)

Definitions?
Commonly defined terms:
- "Program" and how you'll refer to it
- "Program fund" and how you'll refer to it
- "Other funds" referred to within the program
- "Agency/entity" involved and how you'll refer to it
- "Advisory board name" (if you're creating one) and how you'll refer to it
  e.g., "BOARD"; "ADVISORY BOARD"
- Other terms used in describing program or applicants
  e.g, "ELIGIBLE DISTRICT"; "QUALIFIED APPLICANT"

Program creation and oversight authority
- Name of program
- Within what agency?
- Who administers?
- Purpose(s) -- to do what? scope of the program?
  (This is a general statement about purpose. Details about the program administration are placed in subsequent sections or subsections.)
  "THE PROGRAM IS ESTABLISHED TO AWARD GRANTS TO PROVIDE/TO FUND/TO OPERATE/TO ASSIST ..."
- Recipients?
  ".. TO SCHOOL DISTRICTS/TO QUALIFIED PROVIDERS..."

Advisory board created? *(optional)*
See section 22-35-107 for an example of board membership, terms, appointments, vacancies, and compensation. See section 26-6.8-103 for example of specific and more extensive advisory board duties.

- Use canned language as a guideline to create an advisory board. Canned language files are available through the "clause options" button.
- What are the program-specific duties of the advisory board?
  -- Establishing timelines/deadlines for applications, review, recommendations, awards
  -- Establishing guidelines/rules for application format, content, process
  -- Specifying criteria for selection of grant recipients
  -- Making recommendations to the awarding entity
- Include a 10-year or sooner repeal of the advisory board with a sunset review pursuant to section 2-2-1203, C.R.S.

Application process
- Who establishes and administers the application process?
- Who is eligible to apply?
- Eligibility requirements?
- Apply to whom?
- Timeline for application process and deadline for applications?
  (You may need to specify a date by which the administering entity must begin receiving applications to ensure that the entity is not allowed to delay initiation of the program.)
- Application includes what information?
- How much detail do you want to include in statute and what should be left to rules or

guidelines by board or agency?

(Ensure that you specify adequate detail in statute so that the agency is required to institute, administer, and complete the program as intended by the sponsors. In general, do not leave any substantive issues to rule-making.)

- Include a grant of specific rule-making authority to administrative agency?

  e.g., "THE STATE BOARD SHALL PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24 TO IMPLEMENT AND ADMINISTER THE GRANT PROGRAM. AT A MINIMUM, THE RULES MUST SPECIFY THE FOLLOWING:"

Application review - recommendation process - criteria for granting awards

This information could be included in the "application process" if the provisions are fairly short and simple.

- Who reviews the applications?
- Who recommends grant awards? to whom?
- Timeline/deadlines for submitting recommendations?
- Who actually awards the grants or scholarships?

  (*It's better to have the department or the advisory board (if there is one) make recommendations and an executive entity actually award the grant (ensures clearer, more direct accountability.)*
- Priorities for or restrictions on selecting grant recipients?

  (These may be preferences to be considered within the qualified applicant pool -- geographic? economic? focus of program? prior recipients? multiple awards to same applicant? awards in consecutive years? receive awards more than once?)
- Does awarding entity accept or reject entire recommendation list or can it pick and choose from recommendations? *(See 26-6.8-102 (2)(c) for example of this provision.)*
- Deadline for awarding entity to respond to recommending entity?

  (See 26-6.8-102 (2)(c) for example of this provision.)

Amount, number, and frequency of grants

This information could be included with a previous section if the provisions are fairly short and simple.

- Deadline for awards?

  e.g., "ON OR BEFORE ____ EACH YEAR"

  "SHALL AWARD GRANTS ___ DAYS AFTER APPROVAL BY THE ___"

  "THE STATE BOARD SHALL ENSURE THAT ALL GRANTS AWARDED PURSUANT TO THIS ___ ARE ISSUED TO ___ ON OR BEFORE ___ OF EACH BUDGET YEAR FOR WHICH THE GENERAL ASSEMBLY APPROPRIATES MONEY FOR THE GRANT PROGRAM."
- Maximum amounts? per fiscal year?
- Minimum amounts? per fiscal year?
- How often awarded?
- Awards subject to available appropriations -- *ALWAYS include this provision.*

  "THE BOARD SHALL ANNUALLY AWARD GRANTS, SUBJECT TO AVAILABLE APPROPRIATIONS."

Source of grant money - creation of fund?

- If creating a new fund, see canned language available through the "clause options" button.
- If funding source is an existing fund, name the source and cite to statute where it is

created.

(You may need a conforming amendment(s) where existing source fund is created to authorize use of money in the fund for the new grant program.)

Grant of rule-making authority?

This may be separate provision or may be included with other applicable provisions of the program as needed.

- To whom?
- Covering what aspects of program?
- Are rules required or just authorized?

  e.g., "_____ SHALL PROMULGATE RULES" vs. "____ MAY PROMULGATE RULES"

Reporting requirements for grant recipients

- Report to whom?
- Progress/interim reports? how often?
- Include what info?
- Final report?
- Dates/deadlines for progress reports or final report? (Remember: There is an automatic expiration of the reporting requirement after 3 years -- see §24-1-136 (11)(a)(I).)

Review of award recipients' programs?

- Who reviews?
- How often?
- Requirements to continue to receive grant money?
- How is success measured? *(optional)*
- Results of review reported to whom? in what format?

Administering agency/entity reports?

- Summary report for whole program
- To which H&S committees? to the governor?
- Include what info?
- Dates/deadlines for reporting?

Repeal?

- Does the bill sponsor want to repeal the program at some point?
- If the program is not supposed to repeal, but there is an advisory board, include a sunset review of the advisory board under section 2-3-1203, and make the repeal apply just to the advisory board.

GRANT OR SCHOLARSHIP PROGRAM TEMPLATE

(This template does not necessarily include all the elements or sections of a program that you may want to include.)

ARTICLE X

[Name of Program]

or

PART X

[NAME OF PROGRAM]

XX-XX-XXX. Short title. THE SHORT TITLE OF THIS [C.R.S. SUBDIVISION] IS THE "_____ GRANT PROGRAM ACT".

XX-XX-XXX. Legislative declaration. (1) THE GENERAL ASSEMBLY FINDS THAT:
(a) _____
...

XX-XX-XXX. Definitions. AS USED IN THIS [C.R.S. SUBDIVISION], UNLESS THE CONTEXT OTHERWISE REQUIRES:
(1) *[Be sure to define the grant program]*
...

XX-XX-XXX. _____ grant program - created - rules. (1) THERE IS HEREBY CREATED [IN THE DIVISION OF _____ IN THE DEPARTMENT OF _____/ WITHIN THE DEPARTMENT OF _____,] THE _____ GRANT PROGRAM TO PROVIDE GRANTS TO _____ FOR _____.

(2) GRANT RECIPIENTS MAY USE THE MONEY RECEIVED THROUGH THE GRANT PROGRAM FOR THE FOLLOWING PURPOSES:

(3) THE _____ SHALL ADMINISTER THE GRANT PROGRAM AND, SUBJECT TO AVAILABLE APPROPRIATIONS, SHALL AWARD GRANTS AS PROVIDED IN THIS [C.R.S. SUBDIVISION]. SUBJECT TO AVAILABLE APPROPRIATIONS, GRANTS SHALL BE PAID OUT OF [THE _____GRANT PROGRAM FUND CREATED IN SECTION XX-XX-XXX.] [MONEY ANNUALLY APPROPRIATED FOR THE _____ GRANT PROGRAM AS PROVIDED IN SECTION XX-XX-XXX.]

(4) THE _____ SHALL IMPLEMENT THE GRANT PROGRAM IN ACCORDANCE WITH THIS [C.R.S. SUBDIVISION]. PURSUANT TO ARTICLE 4 OF TITLE 24, THE _____ SHALL PROMULGATE SUCH RULES AS ARE REQUIRED IN THIS [C.R.S. SUBDIVISION] AND SUCH ADDITIONAL RULES AS MAY BE NECESSARY TO IMPLEMENT THE GRANT PROGRAM. AT A MINIMUM, THE RULES MUST SPECIFY [THE TIME FRAMES FOR APPLYING FOR GRANTS, THE FORM OF THE GRANT PROGRAM APPLICATION, AND THE TIME FRAMES FOR DISTRIBUTING GRANT MONEY.]

XX-XX-XXX. _____ advisory board - created - duties - repeal.

[See canned language for creating a new entity]

XX-XX-XXX. ____ grant program - application - criteria - awards. (1) TO RECEIVE A GRANT, A _____ MUST SUBMIT AN APPLICATION TO THE _____ IN ACCORDANCE WITH RULES PROMULGATED BY THE _____. AT A MINIMUM, THE APPLICATION MUST INCLUDE THE FOLLOWING INFORMATION:

(2) THE ____ SHALL REVIEW THE APPLICATIONS RECEIVED PURSUANT TO THIS SECTION. IN AWARDING GRANTS, THE _____ SHALL CONSIDER THE FOLLOWING CRITERIA:

(3) SUBJECT TO AVAILABLE APPROPRIATIONS, ON OR BEFORE _____ EACH YEAR OF THE GRANT PROGRAM, THE _____ SHALL AWARD ___ GRANTS AS PROVIDED IN THIS [C.R.S. SUBDIVISION]. THE _____ SHALL DISTRIBUTE THE GRANT MONEY WITHIN ___ DAYS AFTER THE _____ AWARDS THE GRANTS.

XX-XX-XXX. Reporting requirements. (1) ON OR BEFORE ____, 20__, AND ON OR BEFORE ____ EACH YEAR THEREAFTER, EACH ____ THAT RECEIVES A GRANT THROUGH THE GRANT PROGRAM SHALL SUBMIT A REPORT TO THE ____. AT A MINIMUM, THE REPORT MUST INCLUDE THE FOLLOWING INFORMATION:

(2) ON OR BEFORE _____ AND ON OR BEFORE _____ EACH YEAR THEREAFTER FOR THE DURATION OF THE GRANT PROGRAM, THE DEPARTMENT OF _____ SHALL SUBMIT A SUMMARIZED REPORT TO [THE _____ COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES,/ AND TO THE GOVERNOR] ON THE GRANT PROGRAM. AT A MINIMUM, THE REPORT MUST INCLUDE:

(3) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), THE REPORTING REQUIREMENTS SET FORTH IN THIS SECTION CONTINUE UNTIL THE _____ PROGRAM REPEALS PURSUANT TO SECTION _____.

XX-XX-XXX. _____ grant program cash fund.

[Create a fund only if there is a particular need to have a holding place for the money that pays for the grants, e.g., the grant program is paid for with gifts, grants, and donations that are continuously appropriated; the bill sponsor wants to appropriate more money than will be spent in the first year of the program. See canned language for creating a fund.]

XX-XX-XXX. Funding for grant program. THE GENERAL ASSEMBLY SHALL ANNUALLY APPROPRIATE MONEY FROM THE ____ FUND TO THE ____ TO IMPLEMENT THE GRANT PROGRAM. THE ___ MAY USE [UP TO X PERCENT] [A PORTION] OF THE MONEY ANNUALLY APPROPRIATED FOR THE PROGRAM TO PAY THE DIRECT AND INDIRECT COSTS THAT THE ____ INCURS TO ADMINISTER THE GRANT PROGRAM.

[Use this language if you do not create a fund. Specify the source of the money that pays for the grant program. The bill sponsor may want to allow the administering department to use a portion of the program money for administrative costs. Bill sponsor may also want to authorize the department to solicit gifts, grants, and donations. See model language available through the "clause options" button.]

XX-XX-XXX. Repeal of [C.R.S. subdivision]. THIS [C.R.S. SUBDIVISION] IS REPEALED, EFFECTIVE _____.

[If you repeal the entire program, you may still need to include a repeal and sunset review of the advisory board in the advisory board provision.]

COMPONENTS TO INCLUDE WHEN CREATING A NEW CRIME

I. Elements of the crime.
Describe the prohibited conduct as a clear series of elements that a prosecutor must prove in order to convict a defendant. Specify the mental state (i.e., intentionally, knowingly, recklessly, negligently) that the defendant must have in committing the elements. *(See sections 18-1-501 and 18-1-503.)*

II. Penalties of the crime.
Specify the level of offense for the crime (i.e., class 1-6 felony, class 1-3 misdemeanor, or petty offense). Also include any penalty enhancement and aggravating factors. *(See section 18-1.3-401 for felony penalties and section 18-1.3-501 for misdemeanor and petty offense penalties.)*

Examples:

(3) MURDER IN THE FIRST DEGREE IS A CLASS 1 FELONY.

OR

(3) (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....

III. Affirmative defenses, exceptions, and immunity provisions.
Specify any **affirmative defenses** for or **exceptions** to the crime.

Examples:

(2) IT IS AN AFFIRMATIVE DEFENSE THAT THE OFFENDER REASONABLY BELIEVED THAT HIS OR HER CONDUCT WAS NECESSARY TO _____.

OR

(3) IT IS AN EXCEPTION TO THE OFFENSE OF _____ IF THE OFFENDER _____.

Identify any **exceptions** or **immunity** to the criminal act.

Examples:

(4) 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

(2) AN OCCUPANT OF A DWELLING WHO USES PHYSICAL FORCE, INCLUDING DEADLY PHYSICAL FORCE,....IS IMMUNE FROM CRIMINAL PROSECUTION FOR THE USE OF SUCH FORCE.

IV. Crime-specific definitions.
Define any terms that were not initially defined in the definitions section for the part, article, and title.

CREATE A NEW ENTITY

1. What are you creating - a board, commission, committee, task force, or council? In which department is the entity being created?
[*Do not use the "referred to" language below if the entity is defined elsewhere; use a definition if a definition section is reasonably available.*]

(1) THERE IS HEREBY CREATED IN THE [DEPARTMENT OF _____/DIVISION OF _____] THE _____ [NAME OF ENTITY], [REFERRED TO IN THIS [C.R.S. SUBDIVISION] AS THE "BOARD" / "COMMISSION" / "COMMITTEE" / "TASK FORCE" / "COUNCIL"].

2. Does a type 1 or type 2 transfer need to be included? Usually that's necessary only if the entity is long term.

[*You may wish to review section 6 of the drafting manual regarding the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S., and the language that is necessary when creating a new entity. An amendment to the department's organic statute in the Administrative Organization Act of 1968, article 1 of title 24, will also need to be made.*]

(2) THE [NAME OF ENTITY] SHALL EXERCISE ITS POWERS AND PERFORM ITS DUTIES AND FUNCTIONS UNDER THE DEPARTMENT OF _____ AS IF THE [NAME OF ENTITY] WERE TRANSFERRED TO THE DEPARTMENT BY A [**TYPE 1/TYPE 2**] TRANSFER AS DEFINED IN SECTION 24-1-105.

3. What is the membership of the entity?

- *Important elements:*
  - *The number of members - Be sure that your total number of appointments equals the actual number of members, and determine if it is important to have an odd number of members for voting purposes.*
  - *How appointments are made and by whom? Should certain factors be considered when making appointments, such as gender, ethnicity, geographic representation, etc.?*
  - *Are appointments subject to senate confirmation?*
  - *Who is the chair? This can be by election or based on a membership factor such as the executive director of the department or appointment by the governor.*
  - *Should there be a deadline to make the appointments?*

Option A: Governor's appointments

(3) (a) THE [NAME OF ENTITY] CONSISTS OF ___ MEMBERS APPOINTED BY THE GOVERNOR [WITH THE ADVICE AND CONSENT OF THE SENATE,] AS FOLLOWS:

(I) ONE MEMBER WHO [STATE THE QUALIFICATION];

(II) ONE MEMBER WHO [STATE THE QUALIFICATION];

(III) ONE MEMBER WHO [STATE THE QUALIFICATION]; AND

(IV) ONE MEMBER WHO [STATE THE QUALIFICATION].

[(b) THE GOVERNOR SHALL CONSIDER ETHNICITY, GENDER, AND GEOGRAPHIC REPRESENTATION IN APPOINTING THE MEMBERS OF THE [NAME OF ENTITY].]

(c) THE GOVERNOR SHALL MAKE THE INITIAL APPOINTMENTS TO THE [NAME OF ENTITY] NO LATER THAN _____.

Option B: Multiple appointing authorities:

[*If the entity is an executive branch entity, and especially if it has any spending authority or makes recommendations regarding spending, the legislative branch appointments must be fewer than half of the members to avoid violating the separation of powers.*]

(3) (a) THE [NAME OF ENTITY] CONSISTS OF _____ MEMBERS APPOINTED AS

FOLLOWS:

(I) THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL EACH APPOINT ___ MEMBER(S) [STATE ANY QUALIFICATIONS];

(II) THE MINORITY LEADER OF THE SENATE AND THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES SHALL EACH APPOINT ___ MEMBER(S) [STATE ANY QUALIFICATIONS]; AND

(III) THE GOVERNOR SHALL APPOINT __ MEMBER(S) [STATE ANY QUALIFICATIONS].

(b) THE APPOINTING AUTHORITIES SHALL MAKE THEIR INITIAL APPOINTMENTS TO THE [NAME OF ENTITY] NO LATER THAN _____.

4. What will be the terms of the members? This is usually necessary only if the entity exists for more than four years. Note that if the term exceeds two years, members who are representatives will have to win an election in order to finish the term.

(4) EACH MEMBER OF THE [NAME OF ENTITY] WHO IS APPOINTED PURSUANT TO [C.R.S. SUBDIVISION] SERVES AT THE PLEASURE OF THE OFFICIAL WHO APPOINTED THE MEMBER. THE TERM OF APPOINTMENT IS [FOUR] YEARS; EXCEPT THAT THE TERM OF EACH MEMBER INITIALLY APPOINTED PURSUANT TO [C.R.S. SUBDIVISION] IS [TWO] YEARS AND THE TERM OF EACH MEMBER INITIALLY APPOINTED PURSUANT TO [C.R.S. SUBDIVISION] IS [ONE] YEAR.

5. Will the members receive per diem or reimbursement of expenses? What will be the funding source?

Important elements:

- *Who is going to receive compensation and reimbursements? All members of the entity or just legislative members?*
- *Where is the funding going to come from? The general fund, another specific fund, or gifts, grants, and donations?*

Note that section 2-2-326, C.R.S., operates as the default for the payment of compensation and expenses of legislators who have been appointed to any state entity unless the sponsor wants to specify different requirements. The following language clarifies the operation of this default arrangement:

(5) EACH LEGISLATIVE MEMBER OF THE [NAME OF ENTITY] IS ENTITLED TO RECEIVE PAYMENT OF PER DIEM AND REIMBURSEMENT FOR ACTUAL AND NECESSARY EXPENSES AS AUTHORIZED IN SECTION 2-2-326.

Option A: Use if funding is from the general fund and members will receive both compensation and reimbursement

(5) NOTWITHSTANDING SECTION 2-2-326, EACH [LEGISLATIVE] MEMBER OF THE [NAME OF ENTITY] IS ENTITLED TO RECEIVE COMPENSATION AT THE RATE OF _____ DOLLARS PER DAY FOR EACH DAY ON WHICH HE OR SHE IS ACTUALLY ENGAGED IN THE PERFORMANCE OF HIS OR HER DUTIES ON THE [NAME OF ENTITY]. IN ADDITION, EACH [LEGISLATIVE] MEMBER IS ENTITLED TO REIMBURSEMENT FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF HIS OR HER DUTIES AS A MEMBER OF THE [NAME OF ENTITY].

Option B: Use if funding is from the general fund, but members will be receiving only reimbursement, not compensation

(5) NOTWITHSTANDING SECTION 2-2-326, EACH [LEGISLATIVE] MEMBER OF THE [NAME OF ENTITY] SERVES WITHOUT COMPENSATION BUT IS ENTITLED TO RECEIVE REIMBURSEMENT FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF HIS OR HER DUTIES AS A MEMBER OF THE [NAME OF ENTITY].

Option C: Use if being reimbursed from a specific fund

[*Include a conforming amendment in the section where the fund is created that specifies that the fund can be used for this purpose.*]

(5) NOTWITHSTANDING SECTION 2-2-326, EACH [LEGISLATIVE] MEMBER OF THE [NAME OF ENTITY] SERVES WITHOUT COMPENSATION BUT IS ENTITLED TO RECEIVE REIMBURSEMENT FROM MONEY IN THE _____ FUND CREATED IN SECTION _____ FOR ACTUAL AND NECESSARY EXPENSES THE [LEGISLATIVE] MEMBER INCURS IN THE PERFORMANCE OF HIS OR HER DUTIES AS A MEMBER OF THE [NAME OF ENTITY].

Option D: Use if funding depends on gifts, grants, or donations

(5) NOTWITHSTANDING SECTION 2-2-326, EACH [LEGISLATIVE] MEMBER OF THE [NAME OF ENTITY] SERVES WITHOUT COMPENSATION BUT SHALL BE REIMBURSED FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF HIS OR HER DUTIES AS A MEMBER OF THE [NAME OF ENTITY] TO THE EXTENT THAT THE [DEPARTMENT/DIVISION] RECEIVES GIFTS, GRANTS, OR DONATIONS TO COVER THE COST OF REIMBURSEMENT.

And, if necessary, add the following sentence when nonlegislative members are serving without compensation or reimbursement:

THE NONLEGISLATIVE MEMBERS OF THE [NAME OF ENTITY] SERVE WITHOUT COMPENSATION AND WITHOUT REIMBURSEMENT FOR EXPENSES.

6. How will the first meeting be called? Is the chair subject to a term limit? How often must meetings be held?

(6) (a) [Specify who organizes and calls the first meeting of the entity and whether it must meet by a date certain.]

(b) THE [NAME OF ENTITY] SHALL ELECT A CHAIR FROM AMONG ITS MEMBERS TO SERVE FOR A TERM NOT TO EXCEED [TWO] YEARS, AS DETERMINED BY THE [NAME OF ENTITY]. [A MEMBER IS NOT ELIGIBLE TO SERVE AS CHAIR FOR MORE THAN [TWO] SUCCESSIVE TERMS.]

(c) THE [NAME OF ENTITY] SHALL MEET AT LEAST [ONCE] EVERY _____. THE CHAIR MAY CALL SUCH ADDITIONAL MEETINGS AS ARE NECESSARY FOR THE [NAME OF ENTITY] TO COMPLETE ITS DUTIES.

7. What are the powers of the entity?

[*Powers are things the entity may do.*]

(7) THE [NAME OF ENTITY] MAY:

(a) _____;

(b) _____; AND
(c) _____.

[*If the powers include seeking and accepting gifts, grants, or donations, refer to the canned language for gifts, grants, and donations.*]

8. What are the duties of the entity?
[*Duties are things the entity is required to do.*]

- *Typical types of duties:*
  - *Duties relating to implementing grant program;*
  - *Advisory duties - identifying issues;*
  - *Rule-making duties (if created by a* ***type 1*** *transfer);*

Option A:

(8) THE [NAME OF ENTITY] SHALL:
(a) _____;
(b) _____; AND
(c) _____.

Option B:

(8) THE [NAME OF ENTITY] SHALL CONSIDER, BUT NEED NOT BE LIMITED TO, THE FOLLOWING ISSUES:
(a) _____;
(b) _____; AND
(c) _____.

9. Which department or division needs to provide staff support for the board/commission/committee/task force/council?

(9) UPON REQUEST BY THE [NAME OF ENTITY], THE [DEPARTMENT/DIVISION] SHALL PROVIDE OFFICE SPACE, EQUIPMENT, AND STAFF SERVICES AS MAY BE NECESSARY TO IMPLEMENT THIS [C.R.S. SUBDIVISION].

10. Does the entity have to file a report? To whom and in what form should reports be made? Do you want to specify what is in the report? Do you want to specify a written report? Which committee is the report going to be presented or submitted to? Are they going to report to the governor, JBC, or legislative committees?
[Remember the reporting requirement will automatically expire three years after the first report is due unless extended by bill pursuant to § 24-1-136 (11)(a)(I). If the intention is for the reporting requirement to last longer than three years, the drafter should include an exception to § 24-1-136 (11)(a)(I).]

Option A:

(10) ON OR BEFORE [DATE CERTAIN WITH YEAR], AND ON OR BEFORE [DATE CERTAIN

WITHOUT YEAR] EACH YEAR THEREAFTER, THE [NAME OF ENTITY] SHALL REPORT TO THE _____ COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR ANY SUCCESSOR COMMITTEES. THE REPORT MUST INCLUDE, BUT NEED NOT BE LIMITED TO, _____.

Option B:

(10) ON OR BEFORE [DATE CERTAIN WITH YEAR], AND ON OR BEFORE [DATE CERTAIN WITHOUT YEAR] EACH YEAR THEREAFTER, THE [NAME OF ENTITY] SHALL SUBMIT A WRITTEN REPORT TO THE GOVERNOR, THE JOINT BUDGET COMMITTEE, AND THE _____ COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR ANY SUCCESSOR COMMITTEES. THE REPORT MUST INCLUDE, BUT NEED NOT BE LIMITED TO, _____.

11. If the entity has only advisory powers and is intended to be relatively permanent, you must amend § 2-3-1203, C.R.S. , to specify a repeal and sunset review date. A sunset review is required even if the repeal happens prior to the ten-year maximum, unless the sponsor's clear intent is that the entity is intended to be repealed within the ten-year maximum period. Use the canned language for review under section 2-3-1203, C.R.S.

If the entity has more than only advisory powers and has regulatory authority over a profession or occupation, use the canned language for review under section 24-34-104, C.R.S.

Additional consideration:

Does the section need a definitions subsection? If yes, place as the first subsection.

SHORT TITLES

XX-XX-XXX. Short title. THE SHORT TITLE OF THIS [C.R.S. SUBDIVISION] IS THE "__ ACT".

SUNSET PROCESS

If you are adding sunset review to a law that previously was not subject to sunset review, place a section within the organic statute that repeals the statutory authority. Include in the repeal a notice that the function or agency is scheduled for review under the appropriate statute:

(__) THIS [C.R.S. SUBDIVISION] IS REPEALED, EFFECTIVE [DATE]. BEFORE THE REPEAL, THIS [C.R.S. SUBDIVISION] IS SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION [2-3-1203 / 24-34-104].

If you are amending a law that is already subject to sunset review, do not change the description of what is subject to sunset review, but you should update the description of when the sunset review will occur:

(__) This article 9 is repealed, effective ~~July 1, 2017. Prior to its~~ SEPTEMBER 1, 2027. BEFORE THE repeal, ~~the department of regulatory agencies shall review~~ the licensing functions of the secretary of state ARE SCHEDULED FOR REVIEW in accordance with section 24-34-104.

If an agency or regulatory program is scheduled for repeal, amend § 24-34-104 to schedule a sunset review. If an agency is being reviewed use this language (the year in subsection (b) should be 2 years after the year in (a)):

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 [NAME OF ENTITY] CREATED IN [C.R.S. SUBDIVISION].

(b) THIS SUBSECTION (__) IS REPEALED, EFFECTIVE SEPTEMBER 1, 20__[YEAR THAT IS TWO YEARS LATER THAN IN SUBSECTION (a)].

Include the function if the agency will continue after the repeal—only the function is scheduled to repeal:

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].

(b) THIS SUBSECTION (__) IS REPEALED, EFFECTIVE SEPTEMBER 1, 20__[YEAR THAT IS TWO YEARS LATER THAN IN SUBSECTION (a)].

Sometimes a sunset review may be focused on only a very limited function, such as the following:

> **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 PERSONS [SPECIFY THE PARTICULAR TYPE OF REGULATION] PURSUANT TO [C.R.S. SUBDIVISION].
>
> (b) THIS SUBSECTION (__) IS REPEALED, EFFECTIVE SEPTEMBER 1, 20__[YEAR THAT IS TWO YEARS LATER THAN IN SUBSECTION (a)].
>
> OR
>
> (__) THE FUNCTIONS OF THE [NAME OF ENTITY] RELATED TO [__] SPECIFIED IN [C.R.S. SUBDIVISION].
>
> (b) THIS SUBSECTION (__) IS REPEALED, EFFECTIVE SEPTEMBER 1, 20__[YEAR THAT IS TWO YEARS LATER THAN IN SUBSECTION (a)].

If an advisory committee is scheduled for repeal, amend § 2-3-1203 to schedule a sunset review (the year in subsection (b) should be 2 years after the year in (a)):

> **2-3-1203. Sunset review of advisory committees - legislative declaration - definition - repeal.** (__) (a) THE FOLLOWING STATUTORY AUTHORIZATIONS FOR THE DESIGNATED ADVISORY COMMITTEE ARE SCHEDULED FOR REPEAL ON SEPTEMBER 1, [YEAR]:
>
> (__) THE [NAME OF ADVISORY ENTITY] CREATED IN [C.R.S. SUBDIVISION];
>
> (b) THIS SUBSECTION (__) IS REPEALED, EFFECTIVE SEPTEMBER 1, 20__[YEAR THAT IS TWO YEARS LATER THAN IN SUBSECTION (a)]

MEMORIALS FOR DECEASED MEMBERS

first paragraph

> WHEREAS, [Firstname Lastname], the former [title], departed this life on [month day, year], at the age of [XX]; and

paragraph after resolving clause

> That, in the death of [Firstname Lastname], the people of the State of Colorado have lost a devoted public servant and an outstanding citizen, and that we, the members of the [Sixty-second] General Assembly, pay tribute to [Firstname Lastname] for [her/his] years of dedicated public service and do hereby extend our deep and heartfelt sympathy to the members of [her/his] family.

NOTICE TO REVISOR OF STATUTES

> THIS *[IDENTIFY THE PROVISION OF LAW SUCH AS SECTION/SUBSECTION/PARAGRAPH] [TAKES EFFECT/IS REPEALED]* WHEN *[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 WHEN THE CONDITION SPECIFIED IN THIS *[SECTION/SUBSECTION/PARAGRAPH]* HAS OCCURRED BY E-MAILING THE NOTICE TO REVISOROFSTATUTES.GA@STATE.CO.US. THIS *[PROVISION OF LAW] [TAKES EFFECT/IS REPEALED]* UPON THE DATE IDENTIFIED IN THE NOTICE THAT THE *[TRIGGERING EVENT]* OCCURRED OR UPON THE DATE OF THE NOTICE TO THE REVISOR OF STATUTES IF THE NOTICE DOES NOT SPECIFY A DIFFERENT DATE.

Drafters are often called upon to make a statutory provision in a bill take effect (or to prompt its 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 has the responsibility of 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 above, including the specific *e-mail address*, that the individual must use to notify the revisor of statutes. If the drafter believes that he or she needs to deviate from the standard language, he or she should consult with the revisor of statutes.

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APPENDIX G
INITIATIVES

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

Top Twelve Things to Avoid
In Initiative Review-and-comment Memos

12. Forgetting to note that there is no enacting clause.

11. 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?

10. 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.

9. 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?

8. 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.)

7. 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.

6. 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....?"

5. Asking questions about possibilities that are highly remote. If there's no chance your situation will occur in real life, reconsider your question.

4. 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.

3. Being confrontational. In the example above, don't ask, "Doesn't this provision violate the Equal Protection Clause?"

2. 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.

1. Failing to focus questions appropriately. Will the question solicit the information you intended?

Sample Documents

Original Submission

https://drive.google.com/open?id=0Bx5AgNmZkI89OFJpZDNxNU9TSWc

Review and Comment Memo

https://drive.google.com/open?id=0Bx5AgNmZkI89b1ExS2NNM284MTQ

Final Text Filed With Secretary of State After Review and Comment Meeting

https://drive.google.com/open?id=0Bx5AgNmZkI89OWJhWlJBRHlxSEE

Staff Draft Prepared for the Title Board

https://drive.google.com/open?id=0Bx5AgNmZkI89dzJTQ2hVWm1uWmc

GOVERNMENT AND ADMINISTRATIVE LAW NEWS

The Single-Subject Requirement For Initiatives

by Rebecca C. Lennahan

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This article was written by Rebecca C. Lennahan, the former Deputy Director of the Office of Legislative Legal Services for the Colorado General Assembly. The author served on the Ballot Title Setting Board as the Director's designee from 1994 to 1999. She currently is retired, but can be reached a chlenn@uswest.net.

The author gratefully acknowledges Douglas G. Brown, William A. Hobbs, and Richard Westfall, current and former members of the Ballot Title Setting Board, for their assistance in reviewing an early draft of this article.

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 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 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 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.

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 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 semi-colons.[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 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 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 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 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 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 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]

Notes

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. Colo. Constitution, Article V, § 1(5.5).

3. Colo. Constitution, Article V, § 21.

4. Colo. Constitution, Article XIX, § 2(3).

5. Colo. Constitution, Article X, § 20.

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. *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. *See Meyer v. Grant*, 486 U.S. 414 (1988), and cases cited therein.

9. CRS § 1-40-106.5.

10. *See* Memorandum, "Bill Titles—Single Subject and Original Purpose Requirements," dated November 27, 1997, Office of Legislative Legal Services home page, State of Colorado website: http://www.state.co.us/gov_dir/leg_dir/ olls/Titles.pdf.

11. Colo. Constitution, Article V, § 21.

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).

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. Colo. Constitution, Article V, § 1(5); *see also* CRS § 1-40-105.

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. 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. *Id.* at 177-78.

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. *Supra*, note 15.

20. *Amend TABOR No. 32*, 908 P.2d 125 (Colo. 1995).

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. The text of this measure is set forth in *In Re Ballot Title 1997-98 #30, supra*, note 21 at 823.

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. *Supra*, note 16.

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. *In Re Breene, supra,* note 13 at 404.

27. *See* cases related to omnibus measures, *supra*, note 23.

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. *In Re House Bill 1353*, 738 P.2d 371 (Colo. 1987).

30. *Supra*, note 15.

31. *In Re Proposed Initiative 1996-4, supra*, note 7.

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 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. *In Re Ballot Title 1997-98 #64, supra*, note 32 at 1200.

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. *Supra*, note 16 at 178.

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.

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. *In Re Ballot Title for 1997-98 #84*, 961 P.2d 456 (Colo. 1998).

39. The dissenting justices believed that clarifying the applicability of existing limits did not constitute a separate subject.

40. *In Re Title for 1999-2000 #25*, 974 P.2d 458 (Colo. 1999).

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. 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. *In Re Breene, supra*, note 13 at 406.

44. *See* cases annotated in Colorado Revised Statutes, Colo. Constitution, Article V, § 1.

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).

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

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C. Application Of Standards In Specific Cases
1. Measure Found To Satisfy Single-Subject Requirement
2. Measure Found Not To Satisfy Single-Subject Requirement

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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

1. 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).

2. 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).

3. 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).

Rules for Staff of Legislative Council and Office of Legislative Legal Services Review and Comment Filings

Adopted by the Legislative Council on September 6, 2000

1. Legal Authority. These rules are issued pursuant to section 1(5) of article V of the Colorado Constitution and section 1-40-105, Colorado Revised Statutes.

2. Purpose of Rules. The purpose of these rules is to delineate the procedures to be followed by the staff of the Legislative Council and the Office of Legislative Legal Services in preparing comments and conducting review and comment meetings with proponents as specified by the Colorado Constitution and by Colorado Statutes. These rules are intended to balance the interests of proponents, including their interests in a reliable, predictable, and fair process; the public's right to receive full and timely notice of meetings and to participate in them; and the business requirements of the staffs of the two offices. These rules are further intended to advise proponents and interested persons of the procedures to be followed so that they may make more effective use of the review and comment process.

3. Applicability of Rules. These rules apply to the filing of all original petitions, corrected petitions, and amended petitions.

4. Definitions. As used in this rule, the following definitions apply:

(a) "Original petition" means the first submission of the text of a proposed initiated constitutional amendment or initiated law filed by a proponent.

(b) "Corrected petition" means the submission of a proposed initiated constitutional amendment or initiated law that, because of an obvious and plain error, including a grammatical, punctuation, or spelling error or other error of a technical nature, is filed as a replacement for an original petition or amended petition.

(c) "Amended petition" means a revised version of an original petition that contains substantive changes and therefore does not meet the definition of a corrected petition.

(d) "State holiday" means the legal holidays enumerated in or appointed pursuant to section 24-11-101, Colorado Revised Statutes, with the exception of the third Monday in January (observed as the birthday of Dr. Martin Luther King, Jr.) and the third Monday in February (commonly called Washington-Lincoln Day).

5. Designees. The directors of the Legislative Council and the Office of Legislative Legal Services may designate persons on their respective staffs to act in their stead. In addition, the staff of Legislative Council is the designee of the Office of Legislative Legal Services for the purpose of receiving any filings made pursuant to section 1(5) of article V of the Colorado Constitution.

6. Filing Requirements. A petition must be typewritten and legible, contain the text of the initiated measure, and provide the names and mailing addresses of two persons representing the proponents in all matters pertaining to the initiative.

7. Time of Filing. A petition shall be filed with the staff of Legislative Council during normal business hours. Normal business hours are considered to be from 8:00 AM through 5:00 PM, excluding weekends and state holidays. Any petition received by the staff of Legislative Council after 5:00 PM, on a weekend, or on a state holiday shall be deemed to be filed on the next regular business day.

8. Methods of Filing - Numbering. (a) Petitions shall be considered filed when a legible, typewritten, complete copy is received by delivery to the staff of Legislative Council in person, by mail, by electronic mail, or by telefax. It is the responsibility of proponents to verify that filings made by mail, electronic mail, and telefax are received by the staff of Legislative Council in legible and complete form.

(b) Petitions shall be numbered by the staff of Legislative Council for purposes of keeping track of each filing.

9. Scheduling of Review and Comment Meetings. In all cases, a review and comment meeting on an original petition or amended petition shall be scheduled with the proponents and the staff of the Legislative Council and the Office of Legislative Legal Services on a date two weeks after the petition is filed with the staff of Legislative Council.

10. Review and Comment Meetings. (a) Review and comment meetings for original petitions will be conducted in the State Capitol Building or the Legislative Services Building. If a review and comment meeting is required for an amended petition, proponents may participate in said meeting via telephone conference call.

(b) The review and comment memorandum prepared by the Office of Legislative Legal Services and the staff of the Legislative Council for the review and comment meeting shall be transmitted to the proponents as soon as possible but no later than 48 hours prior to the meeting date.

11. Corrected Petitions and Amended Petitions Filed Prior to the Review and Comment Meeting. (a) A corrected petition filed with the staff of Legislative Council shall be treated for all purposes as a substitute for the petition that it corrects unless the proponents request that it be treated as an amended petition. A corrected petition shall be considered at the review and comment meeting originally scheduled for the petition it corrects.

(b) If the staff of Legislative Council determines that a document filed as a corrected petition actually constitutes an amended petition, they shall treat it as an amended petition. Staff should make the determination as soon as practicable but no later than 24 hours after the document is filed. The proponents shall be asked if they wish to proceed with both petitions or to specify the status of the prior petition. The filing date for the amended petition and the date for the review and comment meeting shall be determined in accordance with these rules.

12. Changes Made Subsequent to the Review and Comment Meeting. After the review and comment meeting, if proponents make substantial amendments or revisions to a petition that are not in response to comments made by the staff of Legislative Council or the Office of Legislative Legal Services, the proponents shall file an amended petition with the staff of Legislative Council for the purposes of scheduling and holding a review and comment meeting. The review and comment meeting shall be scheduled in accordance with Rule 9 on a date two weeks after the amended petition is filed. If the directors of Legislative Council and the Office of Legislative Legal Services have no additional comments on the amended petition, they shall so inform the proponents in writing as soon as practicable, but in no case later than 72 hours after the filing, and the review and comment meeting shall be canceled. Notice of the filing of such an amended petition and the conclusion of the directors that they have no additional comments and that a review and comment meeting has been canceled shall be posted in the office of the staff of Legislative Council and communicated to any party who has provided an address to the staff of Legislative Council for such purpose.

13. Changes Made Subsequent to a Title Board Meeting. (a) The staff shall accept a filing as an amended petition if the Title Setting Board has made a determination that it does not have jurisdiction to

set a title for the petition because the proponents have made substantial amendments or revisions to the petition following the review and comment meeting and the amendments or revisions are not in response to comments made by the staff of Legislative Council or the Office of Legislative Legal Services.

(b) If the staff of Legislative Council is informed of or is aware that a petition contains changes that have been made to achieve a single subject following a determination by the Title Setting Board that the petition contains more than one subject, the staff shall inform the proponents that they should file the petition directly with the office of the Secretary of State unless the changes involve more than the elimination of provisions to achieve a single subject.

(c) In addition, the staff shall accept a filing as an amended petition if the Title Setting Board has previously determined that the petition contains more than one subject and the proponents have changed the petition and resubmitted it to the Title Setting Board and the Board has subsequently made a determination in accordance with section 1 (5.5) of article V of the Colorado Constitution that the changes involve more than the elimination of provisions to achieve a single subject or that the changes are so substantial that a review and comment meeting is in the public interest.

(d) If proponents decline to file a petition directly with the Secretary of State because they want it treated as an original petition or if they have determined that it contains changes that involve more than the elimination of provisions to achieve a single subject, the petition shall be accepted and treated as an amended petition.

(e) All amended petitions accepted for filing in accordance with this rule shall be scheduled for a review and comment meeting in accordance with Rule 9 on a date two weeks after the amended petition is filed. If the directors of Legislative Council and the Office of Legislative Legal Services have no comments on the amended petition, they shall so inform the proponents in writing as soon as practicable, but in no case later than 72 hours after the filing, and the review and comment meeting shall be canceled. Notice of the filing of such an amended petition and the conclusion of the directors that they have no additional comments and that a review and comment meeting has been canceled shall be posted in the office of the staff of Legislative Council and communicated to any party who has provided an address to the staff of Legislative Council for such purpose.

14. Computations of Time. For purposes of these rules, time shall be computed as provided in sections 2-4-105 and 2-4-108, Colorado Revised Statutes. "Two weeks" means 14 consecutive days. The counting of any time period included in these rules excludes the day a petition is filed with the staff of Legislative Council. When the final day in a counting period falls on a state holiday, the counting period is extended so that the final day falls on the next regular business day following a state holiday. The following examples illustrate how time periods are calculated:

(a) When a petition is filed on Monday, the 1st of the month, the review and comment meeting shall be held on Monday, the 15th of the month. If Monday the 15th is a state holiday, the review and comment meeting shall be held on Tuesday the 16th.

(b) When a petition is filed on Friday, the 1st of the month, the review and comment meeting shall be held on Friday, the 15th. When Friday the 15th is a state holiday, the review and comment meeting shall be held on Monday, the 18th.

(c) When a petition is filed with the staff of Legislative Council after 5:00 PM on Friday, the 1st of the month, and Monday, the 4th of the month, is a state holiday, the petition shall be deemed to be filed on Tuesday, the 5th of the month. The review and comment meeting shall be held on Tuesday, the 19th.

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 on page 11-7 of the OLLS Drafting 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 page 11-7 of the OLLS Drafting 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 on page G-4 of the OLLS Drafting 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.

APPENDIX H
SAMPLE CLAUSES: AGENCY RULE-MAKING AUTHORIZED

H.1 BROAD RULE-MAKING AUTHORITY

Remember that the broad rule-making authority is a delegation of legislative power and should not be done lightly.

A. (Example Based on PUC Rule-making Provision)

40-2-XXX. Rules. The commission shall promulgate such rules as are necessary for the proper administration and enforcement of this title 40 and shall furnish, without charge, copies of the appropriate rules and regulations to each public utility under its jurisdiction and, upon request, to any public officer, agency, political subdivision, association of officers, agencies, or political subdivisions and to any representative of twenty-five or more consumers. The commission shall be governed by the provisions of article 4 of title 24 for the promulgation and adoption of rules and regulations; except that, notwithstanding any provision of the said article 4 of title 24 to the contrary, the commission shall issue a decision whenever it adopts rules in accordance with this section.

B. (Example Based on Department of Revenue Rule-making Provision)

39-23.5-XXX. Administration by department - action for collection of tax - appeals - limitations - rules. (1) The department is charged with the administration and enforcement of this article 23.5 and may promulgate such rules as may be required to effectuate the purposes of this article 23.5. Such rules shall be promulgated in accordance with article 4 of title 24.

C. (Example Based on Department of Human Services Rule-making Provision)

27-1-XXX. Employment of personnel - rules. (6) The executive director may promulgate such rules as are necessary to implement the provisions of this section. Such rules shall be promulgated in accordance with article 4 of title 24.

D. (Example Based on Department of Agriculture Rule-making Provision)

12-16-XXX. Administration - rules - delegation of duties. (1) The commissioner shall promulgate such rules in accordance with article 4 of title 24 as are necessary for the administration of this part 1.

H.2 SPECIFIC RULE-MAKING AUTHORITY

A. (Example Based on Department of Human Services Rule-making Provision)

26-6-XXX. Standards for facilities and agencies. (1) (a) The department shall prescribe and publish minimum standards for licensing. Such standards shall be applicable to the various types of facilities and agencies for child care regulated and licensed by this article 6; except that the department shall prescribe separate standards for licensing of employer-sponsored on-site child care centers pursuant to subsection (1)(b) of this section. The department shall seek the advice and assistance of persons representative of the various types of child care facilities and agencies in establishing such standards. For employer-sponsored on-site child care centers, the department shall seek the advice and assistance of parents, providers, experts in the child care field, persons in the business community, and representatives of business, research, and advocacy organizations with an expertise and interest in child care. Such standards shall be established by rule of the executive director, and such rules shall be issued and published only in conformity with the provisions and procedures specified in article 4 of title 24 and shall become effective only as provided in said article.

(2) Standards prescribed by such rules shall be 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, either original or renewal, and of other persons directly responsible for the care and welfare of children served;

(c) The general financial ability and competence of the applicant for a license, either original or renewal, to provide necessary care for children and to maintain prescribed standards;

(d) The number of individuals or staff required to insure 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 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; and

(k) Standards for the short-term confinement of a child in defined emergency situations. An emergency situation means any situation where the child is determined to be a danger to himself or others and to be beyond control, all other reasonable means to calm the child have failed, and the child's welfare or the welfare of those around the child demand that the child be confined for a period not to exceed two hours.

B. (Example Based Department of Administration Rule-making Provision)

24-30-XXX. Rules. (1) In order to carry out the purposes of this part 15, the state risk manager may promulgate reasonable rules governing the following:

(a) The administration of the programs authorized in this part 15;

(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 who 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.

(2) Promulgation of the rules authorized by subsection (1) of this section shall be in accordance with article 4 of title 24.

C. (Example Based on Department of Human Services Rule-making Provision)

27-1-XXX. Rules. Pursuant to article 4 of title 24, the executive director of the department of human services shall promulgate such rules as are necessary to implement the procedures specified in sections 19-2-204, 19-2-701, 19-2-1103, 19-2-1104, 19-3-403, 19-3-506, 19-3-507, and 19-3-508 regarding children who are in detention or who are or may be mentally ill or who have or may have developmental disabilities.

H.3 AMENDING CLAUSES FOR RULES AND REGULATIONS IN A BILL (OTHER THAN THE RULE 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.

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 any 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 CCR, 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. For example, Rule 3.1 A. 1. has three levels of subdivision. Do not add punctuation or parentheses that do not exist in the rule.

After the rule citation, the CCR 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 supervisor 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 supervisor 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.

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:

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.

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, 2010,] Special Regulation 7: Computer Software, [which rule was adopted March 28, 2006,] 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-XXXX, 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.

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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 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. Nether 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 rime 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
MEMO SECTION

Substantive Memo Formats

FORMAT

The office has three formats to use when responding to a member's request for a written product and a fourth format for providing information from the Office of Legislative Legal Services to interested persons. 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 contain a legal opinion fully vetted by the office. A legal opinion must use the Garner format unless the attorney has explained to his or her team leader why use of a different format is necessary and the team leader approves use of the proposed alternative format. Legal opinions are 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 is 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.

4. Interested persons memo - It is titled "Memorandum," comes from the office, is on office letterhead, and is fully vetted. An interested persons memo contains general information from the office to the general assembly as a whole or to the general public.

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
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 memorandum generally resolves doubts about whether the General Assembly has authority to enact a particular piece of 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 a particular piece of 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 memorandum generally resolves doubts about whether the General Assembly has authority to enact a particular piece of 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 a particular piece of 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.

OLLS Style Guide for Legal Memos

The OLLS style guide is intended to be used for legal memos, rule review memos, and similar documents prepared by OLLS. When there is a difference between the form used in the text of the memo and in the footnote for the *same* reference source, those differences are indicated. The Style Guide also indicates if the rule is an OLLS specific rule. If the question is not addressed in the OLLS Style Guide, consult The Bluebook (20th ed.) for legal materials or the Chicago Manual of Style (16th ed).

Colorado Revised Statutes (OLLS specific rule)

- In both the text and in a footnote[1], use the § symbol before the x-x-x, followed by C.R.S., except spell out Section if it is the beginning of a sentence (i.e., the Jennifer Gilroy rule). Do not put a space between parentheses denoting subsections, paragraphs, etc.
- Example: Section 24-10-106, C.R.S., contains the waivers of governmental immunity enacted by the general assembly. The immunity waiver found in § 24-10-106 (1)(a), C.R.S., waives governmental immunity for the operation of motor vehicles by public entities.

Colorado Constitution (BB Rule 11)

- In the text: article 1, section 12 of the Colorado Constitution
- In a footnote: Colo. Const. art. 1, §12.

U.S. Constitution (BB Rule 11)

- In the text: Article IV, Section 1 of the U.S. Constitution; or the Full Faith and Credit Clause; or the First Amendment
- In a footnote: U.S. Const. art. IV, §1; U.S. Const. amend. XIV, §2.

[For a reference to a statute or the constitution of another state, see the Blue Book]

Colorado Session Laws (OLLS specific rule)

- 2012 Colo. Sess. Laws, ch. 242
- 2013 Colo. Sess. Laws, ch. 280, §5 (if necessary)

Legislative Bill from Colorado (OLLS specific rule)

- H.B. 15-1021
- S.B. 16-153

Federal Laws (OLLS specific rule)

- 42 U.S.C. §1983
- Family Medical Leave Act (FMLA) of 1993, 29 U.S.C. §2601

Colorado Code of Regulations (OLLS specific rule) and citations to Rules

- 12 CCR 2509-1

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[1] § 24-10-106 (1), C.R.S.

- To cite to an individual rule in a Rule Review Memo, cite to the smallest numbered subdivision possible that contains the identified problem. However, do not cite to the smallest subdivision if this will result in an orphaned rule fragment remaining in the CCR.
- In a Rule Review Memo, make the rule citation identical to the way it appears in the rule, putting in all the punctuation marks and putting a space between the numbers of letters for every level of indentation in the rule. Example: Rule 3.1 A. 1). Do not add punctuation or parentheses that are not found in the rule. Include a reference to chapter headings if that is part of the rule numbering. Consult with Debbie Haskins for more information and see Appendix H in the OLLS Drafting Manual.
- Capitalize the word "Rule" before the rule number and do not refer to rule and regulation

Federal Administrative Rules in the Code of Federal Regulations (OLLS specific rule)

- 7 C.F.R. § 319.76

Case Names (BB Rule 10 and BB Rule 2 - OLLS has selected the *italics* option instead of the <u>underlining</u> option for case names)

- Put the citation of the case in a footnote **not** in the text of the memo.
- When you refer to the case name in the text of the memo, italicize the case name and use the full name of the case the first time you refer to the case. If you refer to the same case again in the text of the memo, use a short form for the case and *italicize* the short form of the case.

  Examples:

  Another example of retroactive legislation was the subject of litigation in *Hickman v. Catholic Health Initiatives*.[2] The Court held in *Hickman* that ...

  In *Loving v. Virginia*,[3] the Court invalidated Virginia's statute ...
- In the text: If you make a point about a decision from the case without referring to the case by name in the text, you need to cite the source of the point, conclusion, or the quotation in a footnote.

  Example:

  But the Colorado Supreme Court has acknowledged that "[v]oter approval to allow variation from otherwise applicable limits is a key feature of [TABOR]."[4]

Use of short citation forms, such as Id. (BB Rule 4)

- In footnotes, use *Id.* when citing the immediately preceding authority but only when the immediately preceding citation contains only one authority. Indicate that a subsequent citation refers to a different page number in the same source.

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[2] *Hickman v. Catholic Health Initiatives*, 328 P. 3d 266 (Colo. App. 2013).

[3] *Loving v. Virginia*, 388 U.S. 1 (1997).

[4] *Havens v. Bd. of County Comm'rs*, 924 P.2d 517, 520 (Colo. 1996).

- In *Havens*, the Court further held...[5] The Court stated ".....".[6]

Citation to Colorado Cases (BB T1.3 for Colorado)
Colorado has adopted a public domain citation format for cases after January 1, 2012. The format is:

- *Iannone v. Callahan*, 2012 CO 22, ¶ 13
- *Callahan v. Iannone*, 2015 COA 14, ¶¶ 8-12

For cases prior to January 1, 2012, the format is:

- *Abromeit v. Denver Career Service Board*, 140 P.3d 44 (Colo. App. 2005)
- *Ficarra v. Dep't of Reg. Agencies*, 849 P.2d 6 (Colo. 1993)
- *Lamm v. Barber*, 565 P. 2d 538 (1977) (citing to Colo Reporter is not necessary)

Citation to 10th Circuit cases

- *Kitchen v. Herbert*, 755 F.3d 1193 (2014)
- *Bishop v. U.S. ex. rel. Holder*, 962 F. Supp. 2d 1252 (2014)

Citation to Colorado Rules of Civil Procedure (OLLS specific rule; from LE Manual)

- C.R.C.P. 4 (to refer to Rule 4)

Citation to a Dictionary or Secondary Source (Chicago 17.238)

- *Merriam-Webster Third International Dictionary*, "Haptic."
- *Oxford English Dictionary*, 13th ed., "Infrangible."

Citation to a Dictionary on the Internet (Chicago 17.239)

- *Merriam-Webster Dictionary Online*, "Contumely," http://www.merriam-webster.com/dictionary/contumely (accessed September 17, 2015)

Citation to Internet and online news (BB Rule 16.6)

- John M. Broder, *Geography is Dividing Democrats over Energy*, N.Y. Times, Jan. 27, 2009, at A1.
- John M. Broder, *Geography is Dividing Democrats over Energy*, N.Y. Times (Jan. 27, 2009), http://www.nytimes.com/2009/01/27/science/earth/27coal.html.

Citation to legislative committee hearing or legislative materials (BB Rule 13.3 and 13.4/OLLS specific rule - add complete date of the committee hearing)

- *Limited Waiver of Governmental Immunity for Claims Involving Public Schools for Injuries Resulting From Incidents of School Violence: Hearing S.B. 15-213 Before the Sen. Judiciary Committee*, 70th General Assembly, 1st Reg. Sess. (April 30, 2015) (statement of Sen. Bill Cadman, legislative sponsor)/(statement of Sen. Ellen Roberts, chair)
- *Report to the Colorado General Assembly*, Water Resources Review Committee,

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[5] *Id.*

[6] *Id.* at 519.

Colorado Legislative Council, Research Publication No. 643, December 2014.

Citation to audiotape of legislative hearing or debate (Rule 18.7.3/OLLS specific rule)

- Audiotape: Hearing on SB 15-271, Continuation of the Office of Consumer Counsel, House Transportation and Energy Committee, 2015 Archived Audio (May 5, 2015) available on www.leg.state.co.us

How to Use Block Quotations

- A good rule of thumb is to place any quote that is 50 words or longer in a block quotation. Block quotations need neither an initial indent nor quotation marks. The text following the block quotation does not need to be indented if it is a continuation of the paragraph preceding the block quote.
- A full statutory provision or rule should be shown in block quotes (even if the passage is less than 50 words). If a passage is very long, consider putting the passage in an **Addendum**. Make the statute or rule resemble the source material as much as possible.

Spaces after periods.

- Use one space not two after a period

Use of Attachments (OLLS specific rule)

- Label an attached document as Addendum in bold
- If there are multiple attachments, label them as Addendum A, Addendum B
- The memo and all additional attachments need to be stored in one complete document

General Comments about Footnotes:

- Italicize case names
- Put a period after the entry
- Use the § symbol before x-x-xxx, C.R.S., but not at the beginning of a sentence.

Special Symbols:

- To make a §, hold down the alt key and 2-1 on the number key pad
- To make a ¶, hold down the alt key and 0-1-8-2 on the number key pad
- To make an em dash (—), hold down the alt key and type 0-1-5-1 on the number key pad. Use em dashes to offset an element of a sentence that seeks to amplify or explain something. Em dashes are meant to be a break from the flow of a sentence, so use them only when a comma fails to convey the intended emphasis. Do not place a space between an em dash and the letters on either side. Using two hyphens is never an acceptable substitute.
  Right: *There was a storm—which left 20 inches of snow—last weekend.*
  Wrong: *There was a storm -- which left 20 inches of snow -- last weekend.*

Style Issues

1. Citation-related issues

To reduce the bulk of documentation, subsequent citations to sources already given

in full should be shortened whenever possible:

- "See" and "cf." Authors should keep in mind the distinction between see and cf. Cf. means "compare" or "see, by way of comparison." "See" is used to direct the reader to a source. (Chicago, 16.58)
- Formats to keep in mind:
  - URLs (Chicago 17.4-17.15)
  - Two, three, or more authors (Chicago 17.27-17.30)
  - Periodicals (17.149)
  - Emails (17.208-17.209)
  - Info on Bluebook (Begins at 17.275)
  - Public documents online (17.356)

2. Capitalization

- The general rule is to not capitalize words and titles, such as "governor" or "department", unless used as part of a proper noun. For example:
  Do not capitalize:
  - attorney general
  - governor
  - department
  - board
  - general assembly

  Do capitalize:
  - Attorney General Cynthia Coffman
  - Governor Hickenlooper
  - Colorado Department of Education
  - The Colorado General Assembly

After lunch, Governor Hickenlooper went for a walk.
The governor went for a walk.
The Department of Motor Vehicles will receive $1 million.
The department can also accept gifts, grants, and donations.
All extra money goes to the state.

3. Numbers

- Write out one through ten and use numerals for 11 and up. Use the words million, billion, etc., when possible (3.2 million).
  One dog; two houses; ten apples; 11 parachutes; $400,333; 3.2 million stars

4. Quotes

- If inserting a quotation that begins with a capital letter into the middle of a sentence, or if beginning a sentence with a quotation with a lowercase first word, use a bracket around the first letter to indicate the change of case (Chicago, 11.19). For example:
  Further, "[r]etroactive application ...

5. Initials, Acronyms, and other Short Forms

No single rule dictates when drafters and editors should use, or refrain from using, initials, acronyms, or other short-form versions of a term. Instead, drafters and editors

should think of the intended recipient to determine whether to use initials or abbreviations. Ask: Is the intended audience more likely to be aided or hindered by the use of short forms?

If a short version of a term is appropriate, there is no need to define it in parentheses or quotations marks after the long version of the term. This practice mirrors the way pronouns are used in standard, plain-language writing; the writer assumes an average reader can determine the antecedent of an appropriately placed pronoun without the use of additional punctuation aids.

The Colorado Department of Education employs thousands of employees. The department is one of the biggest in the state.

The short-form version of some terms have become the de facto primary term through popular use (PERA, for example). There is no need to spell out the entire term on first reference if the audience is highly likely to understand. Similarly, while unfamiliar acronyms can be a stumbling block for readers, familiar acronyms can actually be the preferred term for some readers. If, for example, the intended audience is intimately familiar with the Department of Regulatory Agencies, or if a particular memo references multiple state departments, using "DORA" might be a better short-form option than "department".

6. Miscellaneous

To add emphasis, use italics or bold. Do not use underlining to add emphasis.

S:\LLS\Committees\Committee on Style\Legal Memo Recommendations.docx

OLLS POLICIES ON LEGAL OPINIONS AND LEGAL MEMORANDUMS

October 27, 1994
(Revised October, 2005; December 2007)

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 upon 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.

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[1] A legal opinion is a document prepared by the office that draws a legal conclusion regarding the meaning or legal effect of 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.

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 the 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.[1]

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 modify 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:

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[1] It is important to note the difference between opinion and advice. Black's Law Dictionary (5th ed. 1979) notes this distinction as follows: An opinion is "a document prepared by an attorney for his client, embodying his understanding of the law as applicable to a state of facts submitted to him for that purpose" while advice is a "view; opinion; information; the counsel given by lawyers to their clients; an opinion expressed as to wisdom of future conduct." To put this difference in context, legal opinions of the Office generally set forth our understanding of the law as applicable to a particular fact situation or issue so that members may make an informed decision rather than advising members as to the wisdom of any particular decision.

- 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 his 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 moneys. Examples include questions regarding the ability of the Governor to cut the budget, whether certain types of moneys 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 adopt executive branch rules and regulations and the appointment of legislators to boards and commissions.

Other subject matters 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.

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 his or her team leader whether the memo needs to be reviewed by Charley or his designee (the designee may be in place of or in addition to Charley), or my the team leader only. Next, the attorney will conduct the necessary research and determine a line of reasoning and conclusion for the memo. Next, the attorney will e-mail either a brief description of the issue, line of reasoning, conclusion, or outline to the reviewer(s) (team leader, Charley, and his designee if they are involved) and set up 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 help 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 Charley and his designee if they will be reviewing it as well. Charley and his designee can send the then send the memo back to the attorney for finalization. The team leader and Charley (and his 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 contains, 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 FAQ and Wade's Knowledgebase tutorial.

GENERAL POLICIES ON 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 get prior approval from the member requesting the opinion prior to contacting those parties.

> **Explanation of purpose.** The purpose of this policy is to require a determination whether an issue has already been addressed by an authoritative source,[1] 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 hold statutes as unconstitutional only when the constitutional defect is proven beyond a reasonable doubt.[2] These principles should guide any legal opinion or legal memorandum prepared by this Office.[3]
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> 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.[4]
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> Bills do not enjoy any presumption of constitutionality in the face of valid

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[1] 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.

[2] 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).

[3] Because our office is an instrumentality of the Colorado General Assembly, our office 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.

[4] See, for example, *Metzger v. People,* 98 Colo. 133, 53 P.2d 1189 (1936).

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.

GP-3. Rules of construction[5] 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 the 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.[6]

Construction of an ambiguous statute by administrative officials charged with its enforcement shall be given deference by the courts.[7]

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.[8]

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[5] To become more familiar with rules of construction, see *Sutherland Statutory Construction* and article 4 of title 2, C.R.S.

[6] 2A Singer, *Sutherland Statutory Construction*, section 46.01, at 81 (4th ed. 1985). See also *People v. District Court*, 713 P.2d 918 (Colo. 1986).

[7] *Larimer Cty. Sch. Dist. v. Industrial Comm'n,*727 P.2d 401 (Colo. App. 1986), cert. denied 752 P.2d 80 (Colo. 1988).

[8] *People v. Terry,* 791 P.2d 374 (Colo. 1990).

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[1]. "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 of the member or former member or the member or former member has waived the work product privilege (see the subsequent paragraph on waiver or release).

Factual data[2] - 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 a 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

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[1] For example, if a person requests **all** amendments prepared for a particular member on a bill, you can't 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 of the member or if the member has waived confidentiality.

[2] 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.

the consent of the member or former member.

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 where 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.

IMPORTANT ISSUES TO KEEP IN MIND WHEN DRAFTING

Once a request for legislation is made to the OLLS, the assigned drafter usually begins work by focusing on how to best accomplish the purpose of the proposed legislation. However, a more important issue to be first decided 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 which may affect legislation which they are drafting. It should be noted that, while by no means does this list include all potential issues which may affect proposed legislation, it does provide a solid starting point for the drafter to begin thinking about any limitations which 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? Allows less evidence for conviction of a crime after committed?
2. If the proposed legislation is to be retrospective in operation, are substantive rights being affected 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 of state government, does the proposed bill originate in the House of Representatives?
9. Is the proposed legislation attempting to disburse public moneys by some means other than by appropriation?
10. Are public moneys 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 section 20 of article X (Amendment #1)?

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 under 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 moneys 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 moneys 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 Section 2 of Article XVIII of the state constitution, are the proceeds earmarked in accordance with Article XXVII of the state constitution?

I. Establishing/Abolishing/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, transferring a state agency or department, have all of the necessary amendments been made to the Administrative Organization Act?
4. Has the proper type of transfer (type 1, 2, or 3) been made to accomplish the transfer of an existing department, institution, or other state agency or its powers, duties, and functions to another department, institution, or state agency?
5. Has the proper type of transfer (type 1 or 2) been made for the creation of a new department, institution, or other state agency as if the new entity was transferred?
6. 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. Does a disciplinary process created for licensees/registrants have adequate procedural safeguards for due process purposes? If the disciplinary process includes the Court of Appeals, has the statutory subject matter jurisdiction for the Court of Appeals been amended?
2. If licensing/registration is to occur through a board or commission in the division of registrations, department of regulatory agencies, has the board or commission been authorized to adjust its fees to cover its direct and indirect costs? Are the fees deposited in the division of registrations cash fund?
3. Does the proposed bill contain any mandatory continuing education requirement? Has the sponsor been informed that an administrative evaluation of

the continuing education requirement must occur prior to the introduction of the bill?

4. In order for the State to require FBI criminal background checks of employees, licensees, etc., has the required language from the federal government been placed in the statute?
5. If denial of a license/permit/certification for any business, occupation, or profession is based upon a person's conviction of a felony or a crime involving moral turpitude, does an applicable exception exist to the general rule set forth in statute that such a conviction cannot constitute grounds for denial or does such an exception need to be created?

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 subject to termination is being extended, is the authority being extended beyond 10 years? 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 one-time review of the advisory committee by the General Assembly to occur no later than 10 years after the comittee'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 contained in 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 (food stamps, 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 children's basic health plan or CHIP) 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?
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?

P. Education

1. Do you recall that:
   a. The State Board of Education and the Commissioner of Education are constitutionally created?
   b. The State is required to provide a thorough and uniform system of free public schools?
   c. The State School Fund is constitutionally created and the Fund's principal is inviolate while the interest earned on the Fund may only be expended for maintenance of the schools?
   d. Giving public aid to private schools, churches, or any sectarian purpose is prohibited?
   e. The State Land Board and its duties and powers regarding the control and disposition of state public lands are constitutionally based?
   f. The General Assembly may require persons ages 6 to 17 to attend public schools, unless educated by an alternative means?
   g. School districts with boards of education are constitutionally required?
   h. A board of education has local control of instruction in its school district?
   i. Textbooks cannot be prescribed by the General Assembly or by the State Board of Education?
   j. The Board of Regents of the University of Colorado and the terms of office for which they serve are constitutionally based?
   k. The Board of Regents of the University of Colorado is constitutionally

required to select the University's President?

l. The City and County of Denver is constitutionally required to constitute one school district?

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?

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 utilized in determining 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?

MEMORANDUM

October 29, 1996

TO: Interested Persons

FROM: Office of Legislative Legal Services

RE: Title questions

In February of 1995, concern was expressed during a meeting of the Executive Committee of the Legislative Council about opinions of OLLS staff as to whether an amendment would be appropriate under the title of a bill. Discussion focused on the fact that asking for a title opinion may place OLLS staff in an awkward situation that is inappropriate for nonpartisan staff. An OLLS staff person should bring potential title issues to the attention of his or her team leader and Doug or Becky as soon as they arise.

The Executive Committee provided the OLLS with the following guidance concerning the issuance of title opinions:

1. An OLLS staff person should continue to consider title issues carefully when drafting bill and amendments and to advise members when they request amendments that may be beyond the title of the bill.

2. Once a bill or amendment is drafted, the OLLS staff should handle requests for title opinions as follows:

- An OLLS staff person 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 a committee chair or the chair of the committee of the whole.**

- An OLLS staff person should not put title opinions in writing unless the member insists. In this situation, the member should be advised that the OLLS will speak with the members of the Executive Committee from that member's house prior to writing the opinion.

MEMORANDUM

March 10, 1994

To: Senator Norton
Representative Berry

From: Office of Legislative Legal Services

Re: 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

EXECUTIVE SUMMARY

1. During the 1993 Regular Session of the General Assembly, the Office of Legislative Legal Services was directed by the legislative leadership to institute a procedure to make members aware of bills that are subject to special statutory provisions in addition to normal legislative procedures.

2. This procedure was implemented in the 1994 Regular Session by informing the prime sponsor of a bill of any special requirements, attaching a letter to the bill when introduced which indicates those special requirements, and giving a copy of the letter to the chair of the committee to which the bill is referred.

3. During the course of the 1994 Regular Session there has been concern and confusion about the criteria we have used to identify bills subject to the provisions of the law dealing with mandatory health care coverage provisions.

4. In the future, based on a "plain meaning" interpretation of §10-16-103, C.R.S., we will identify any bill as subject to this law which:

   (1) imposes any new requirement on health care coverage entities to include coverage for new diseases, conditions, or courses of treatment;

   (2) would expand the types of health care providers which health care coverage entities must reimburse for the performance of covered services; or

   (3) makes changes to existing required coverages or requirements for payment for health care services.

   Doubts will be resolved in favor of identifying a bill as subject to the law.

5. These guidelines will still be applicable even if H.B. 94-1186, in its current form, amends §10-16-103, C.R.S.

6. Section 10-16-103, C.R.S., does not make legislative action on a bill dependent upon compliance with this law. Section 10-16-103, C.R.S., should be implemented by the General Assembly in a manner consistent with other requirements imposed on the General Assembly by the Colorado Constitution and the intent and purpose of §10-16-103, C.R.S.

INTRODUCTION

Pursuant to a direction from the legislative leadership during the 1993 Regular Session, we have instituted a procedure for dealing with bills which are affected by certain statutory requirements in addition to the regular legislative procedures[1]. The new procedure generally involves informing the prime sponsor of such special requirements, attaching a letter to the bill when introduced which indicates those special requirements, and giving a copy of the letter to the chair of the committee to which the bill is referred.

During the course of the 1994 Regular Session, there has been concern and confusion about the criteria we use to determine which bills are subject to the requirements of §10-16-103, C.R.S., related to bills mandating a health coverage or offering of a health coverage by a health insurer, a nonprofit hospital, medical-surgical, and health service corporation, a health maintenance organization, or a prepaid dental care plan organization (collectively referred to as health care coverage entities). The purpose of this memorandum is to set forth guidelines for how we will determine in the future which bills are subject to the provisions of §10-16-103, C.R.S. This memorandum also analyzes how the General Assembly should consider bills identified as subject to the provisions of §10-16-103, C.R.S.

REQUIREMENTS OF §10-16-103

Section 10-16-103 (1), C.R.S., provides that:

> Every person or organization which seeks legislative action which would mandate a health coverage or offering of a health coverage by an insurance carrier, nonprofit hospital and health care service corporation, health maintenance organization, or prepaid dental care plan organization as a component of individual or group policies shall submit a report to the legislative committee of reference addressing both the social and financial impacts of such coverage, including the efficacy of the treatment or service proposed.

Section 10-16-103 (2)(a), C.R.S., requires that parties seeking additional health insurance mandates provide information to the committee of reference dealing with the social impact of the proposed mandatory coverage:

> (2) Guidelines for assessing the impact of proposed mandated or mandatorily offered health coverage to the extent that information is available shall include, but not be limited to, the following:
>
> (a) The social impact of such mandatory coverage, including, but not limited to, the following:

[1] The types of bills subject to special statutory requirements in addition to regular legislative procedures are: (1) bills mandating a health coverage or offering of a health coverage by a health care coverage entity; (2) bills affecting criminal sentencing, which are to be reviewed by the legislative members of the Criminal Justice Commission whenever possible under §18-1.5-103, C.R.S., and must contain an appropriation of moneys for any increased capital construction and operating costs which are the result of the bill for a period of five years under §2-2-703, C.R.S.; (3) bills subject to the jurisdiction of the Capital Development Committee 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 under §2-3-1304 (1), C.R.S.; and (4) bills proposing the regulation of an unregulated profession or occupation subject to the "sunrise" review process of the Sunrise and Sunset Review Committee under §24-34-104.1, C.R.S.

(I) The extent to which the treatment or service is generally utilized by a significant portion of the population;

(II) The extent to which the insurance coverage is already generally available to the general population;

(III) The extent to which the lack of coverage results in persons avoiding necessary health care treatments;

(IV) The extent to which the lack of coverage results in unreasonable financial hardship;

(V) The level of public demand for the treatment or service, including the public level of demand for insurance coverage of such treatment or service;

(VI) The level of interest of collective bargaining agents in negotiating privately for inclusion of this coverage in group contracts;

Section 10-16-103 (2)(b), C.R.S., requires the submission of information on the financial impact of such mandatory coverage:

(b) The financial impact of such mandatory coverage, including, but not limited to, the following:

(I) The extent to which the coverage will increase or decrease the cost of the treatment or service;

(II) The extent to which the coverage will increase the appropriate use of the treatment or service;

(III) The extent to which the mandated treatment or service will be a substitute for more expensive treatment or coverage;

(IV) The extent to which the coverage will increase or decrease the administrative expenses of insurance companies and the premium and administrative expenses of policyholders;

(V) The impact of this coverage on the total cost of health care in Colorado.

Reading §10-16-103, C.R.S., as a whole, the apparent legislative intent was to require that certain information be made available to a committee of reference when considering a bill falling under the law. The information requirements stated in §10-16-103 (2)(a) and (2)(b), C.R.S., quoted above, demonstrate that it was intended that a committee of reference have a broad spectrum of information on many different issues when making a decision about legislation relating to mandatory health care coverage requirements.

TEST TO BE APPLIED TO DETERMINE WHETHER A BILL IS SUBJECT TO § 10-16-103

Section 10-16-103, C.R.S., applies to any bill "**which would mandate a health coverage or offering of a health coverage by ...**" a regulated health care coverage entity. When we apply a "plain meaning"

interpretation[2] to these words, the statute applies to an "order" or "requirement" that health care coverage entities have certain terms and conditions of coverage and payment for medical services in policies. Accordingly, §10-16-103, C.R.S., should apply to:

(1) bills which impose any new requirement on health care coverage entities to include coverage for new diseases, conditions, or courses of treatment;

(2) bills which would expand the types of health care providers which health care coverage entities must reimburse for the performance of covered services; or

(3) bills which make changes to existing required coverages or requirements for payment for health care services.

Doubts should be resolved in favor of identifying a bill as subject to the provisions of the law. Some examples of bills which should be identified as subject to §10-16-103, C.R.S.: (1) bills which require health care coverage entities to waive or limit preexisting condition limitations; (2) bills which require health care coverage entities to guarantee the issuance of standardized policies to persons applying for coverage and able to pay premiums; (3) bills mandating health care coverage entities cover a particular treatment, or treatment for a particular condition, regardless of what type of practitioner renders the treatment; and (4) changes to existing mandatory coverages, for example, mental health coverage, which expand the obligation of health care coverage entities with respect to the mandate.

THE GENERAL ASSEMBLY HAS AUTHORITY TO INTERPRET THE MANNER IN WHICH §10-16-103 IS IMPLEMENTED

As a general rule, the General Assembly is invested with plenary power to pass legislation, subject to any restrictions imposed by the Colorado Constitution. *Colorado State Civil Service Employees Association v. Love,* 448 P. 2d 624 (Colo. 1968). One legislature is not bound by the acts of a previous legislature[3].

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[2] The courts generally apply the "plain meaning" rule in the following manner:

> Whether we are considering an agreement between the parties, a statute or a constitution, with a view to interpretation, the thing which we are to seek is **the thought it expresses**. To ascertain this the resort in all cases is to the natural signification of the words employed in the order of grammatical arrangement in which the framers of the instrument have placed them. If, thus regarded, the words embody a definite meaning which involves no absurdity and no contradiction between different parts of the same writing, then that meaning, apparent on the face of the instrument, is the one which alone we are at liberty to say was intended to be conveyed. **In such a case there is no room for construction**. That which the words declare is the meaning of the instrument, and neither the courts nor legislatures have a right to add to or take away from that meaning.

Colorado State Civil Service Employees Association v. Love, 448 P. 2d 624 (Colo. 1968) (emphasis by court). *Webster's New International Dictionary of the English Language,* (2nd ed. 1940), defines "mandate" as "An authoritative command; order; injunction; decree; precept; bidding; . . . an emphatic admonition or direction, each with the force of a command."

[3] As a general rule:

> The legislature by statute or joint resolution **cannot bind or restrict itself or its successors** to the procedure to be followed in the passage of legislation. . . . It **may not** by its rules **ignore constitutional restraints or violate fundamental rights**, and there should be a reasonable

(continued...)

Section 10-16-103, C.R.S., is a statutory rule of legislative procedure. This law is subject to reasonable interpretation by the General Assembly and may be amended by act of the General Assembly.

SECTION 10-16-103, C.R.S., SHOULD BE IMPLEMENTED IN A MANNER CONSISTENT WITH THE "GAVEL" AMENDMENT OF THE COLORADO CONSTITUTION

The General Assembly is subject to the "GAVEL" amendment (article V, section 20 of the Colorado Constitution), which requires that each bill referred to a committee of reference be acted upon by the committee within applicable deadlines. Thus, the General Assembly should not apply §10-16-103, C.R.S., so as to preclude consideration of bills by committees, since that would ignore the constitutional restraint imposed by article V, section 20 of the Colorado Constitution.

Section 10-16-103, C.R.S., however, is silent as to what the "legislative committee of reference" or the General Assembly as a whole must do with information provided under this law. In fact, it appears the statute requires that the committee of reference be aware that a bill may affect mandated health coverage benefits and that the committee have available to it the information set forth in the statute. There is no direction as to how or whether the committee is to act on the information.

EFFECT OF HOUSE BILL 94-1186

House Bill 94-1186, by Representative Prinster and Senator Hopper, makes amendments to §10-16-103, C.R.S[4]. The guidelines for interpreting §10-16-103, C.R.S., contained in this memorandum would still apply if H.B. 94-1186 is enacted. The bill clarifies that the law does apply to the expansion of an existing health care coverage mandate.

(...continued)

> relation between the mode or method of proceeding established . . . and the result which is sought to be obtained. But within these limitations all matters of method are open to the determination of the house, and it is no impeachment of the rule to say that some other way would be better, more accurate or even more just.

Sutherland Stat. Const. §7.04 (4th ed.) (emphasis added).

[4] House Bill 94-1186 would clarify that §10-16-103, C.R.S., applies to any proposal to expand an existing mandated coverage. The bill would require that the proponents submit a report to the Legislative Council prior to introduction of a bill and that the Legislative Council Staff would determine that the report conforms with the requirements of this law. The Legislative Council Staff would then make the report available to interested parties at the time of introduction of a bill. The interested parties would have an opportunity to submit written comments to the Legislative Council Staff or a committee of reference evaluating and supplementing the original report. Each committee of reference considering a bill covered by the law would have to review the report prior to consideration of such a bill and make determinations that the report is complete and valid, that the research cited meets professional standards, that all relevant research has been brought to light, and that the conclusions and interpretations drawn from the evidence are consistent with the data presented. House Bill 94-1186 would also allow a committee of reference identifying deficiencies in a report to request written clarification prior to consideration of the bill. House Bill 94-1186 specifically states that in order to meet deadlines for passage of bills, a committee of reference may consider a bill even if a report submitted under this law is deficient. House Bill 94-1186 would also add specific requirements to the contents of reports submitted under this law, including: Additional analyses of methods to manage the utilization and costs of a proposed mandate; the effect on the number and types of providers of a mandated treatment over the next five-year period; the impact of associated costs other than premiums and administrative costs on the costs and benefits of the mandate; effects on the cost of health care to employers and employees; the medical efficacy of the mandatory coverage; and the effects of balancing the social, economic, and medical efficacy considerations associated with the mandated coverage.

Debbie Haskins and Bart Miller of the Legislative Legal Services Office have had preliminary conversations with the Legislative Council Staff concerning implementation of the requirements of §10-16-103, C.R.S., whether or not House Bill 94-1186 is enacted. These conversations concerned procedures for coordination with bill sponsors by the Legislative Legal Services Office Staff and the Legislative Council Staff providing assistance to persons responsible for gathering information required by the law. The Legislative Council Staff will write a memorandum with more detailed proposals relevant to its functions.

cc: Representative Foster
Charles Brown, Director, Legislative Council Staff
Jim Hill - Principal Analyst, Legislative Council Staff, Policy and Research Section

MANDATORY COVER LETTERS FOR BILLS SUBJECT TO SPECIAL STATUTORY REQUIREMENTS

Bills Subject to Capital Development Requirements
Memo to Committee Chair

To: [Senator/Representative]

Chair, Capital Development Committee

From: Office of Legislative Legal Services

Date: [ ]

Re: Capital development requirements affecting [Senate/House Bill 11-]

You are receiving this notice because you chair the Capital Development Committee.

[Senate/House] Bill [11-] **CONCERNING** [bill title], has been referred to your committee and involves **capital development.** This bill appears to be subject to the following requirement:

- **Copies reviewed by the Capital Development Committee**
  (House Rule 50 and Senate Rule 42 require that copies of bills, having been determined by the rules of the House or Senate to be dealing with capital construction requests, controlled maintenance requests, or proposals for the acquisition of capital assets, be sent to and reviewed by the Capital Development Committee for advisory recommendations to the bill's assigned committee of reference.)

We have also communicated this information to the sponsor of the bill and to the [1st house leadership and the bill sponsor].

If you have questions, please contact our office.

CC: [Prime sponsor]
Legislative Council staff for CDC via e-mail

S:\LLS\GA\MEMOS\Mandatory Covers\Capital_Development_Requiremets_Committee.wpd

Bills Subject to Capital Development Requirements
Memo to Leadership Attached to Bill

To: [1st house leadership]

From: Office of Legislative Legal Services

Date: [ ]

Re: Capital development requirements affecting LLS 11-[Senate/House Bill]

LLS 11-[Senate/House Bill] **CONCERNING** [bill title], involves **capital development.** This bill appears to be subject to the following requirement:

- **Copies reviewed by the Capital Development Committee**
  (House Rule 50 and Senate Rule 42 require that copies of bills, having been determined by the rules of the House or Senate to be dealing with capital construction requests, controlled maintenance requests, or proposals for the acquisition of capital assets, be sent to and reviewed by the Capital Development Committee for advisory recommendations to the bill's assigned committee of reference.)

We have also communicated this information to the sponsor of the bill and to the chair of the Capital Development Committee.

If you have questions, please contact our office.

CC: [Prime sponsor]

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Bills Affecting Changes in the Number of Judges
Memo to Leadership Attached to Bill

To: [President of the Senate/Speaker of the House of Representatives]

From: Office of Legislative Legal Services

Date: [ ]

Re: Legal requirements affecting [Senate/House Bill 11-], which [increases/decreases] the number of judges

[Senate/House Bill 11-] CONCERNING [bill title] **[increases/decreases] the number of judges.** This bill appears to be subject to the following legal requirements:

- **Deadline for introduction on or before [1st day of session -- see Deadlines calendar issued each session]**
  (Joint Rule 23)

- **Passage by a 2/3 vote of the members of each house**
  (Section 10 (3) of article VI of the Colorado constitution)

- **Final passage by both houses on or before [59th day of the session -- see Deadlines calendar issued each session]**
  (Joint Rule 23)

We have also communicated this information to the sponsor of the bill.

If you have questions, please contact our office.

CC: [Prime sponsor]

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Bills Subject to Mandatory Continuing Education Requirements
Memo to Committee Chair

TO: [Senator/Representative]
Chair, Committee on _____

FROM: Office of Legislative Legal Services

DATE: [ ]

RE: Mandatory Continuing Education Requirements affecting [House/Senate] Bill 11-

Section #-#-# (, C.R.S.) of [Senate/House] Bill **11-0000**, **CONCERNING** [bill title], which has been referred to your committee, appears to be subject to the requirement of section 24-34-901, C.R.S. The purpose of this memorandum is to inform you of the requirements specified in these provisions. Our office has communicated these requirements to the sponsor of the bill.

Section 24-34-901 states that "Before any bill is introduced . . . that contains a mandatory continuing education requirement for any occupation or profession, the practice of which requires a state of Colorado license, certificate, or registration, the group or association proposing such mandatory continuing education requirement shall first submit information concerning the need for such a requirement to the office of the executive director of the department of regulatory agencies."

cc: [bill sponsor]

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Bills Subject to Mandatory Continuing Education Requirements
Memo to Leadership Attached to Bill

TO: [1st house leadership]

FROM: Office of Legislative Legal Services

DATE: [ ]

RE: Mandatory Continuing Education Requirements affecting LLS 11-____

Section #-#-# (, C.R.S.) of the attached bill, **LLS No. 11- , CONCERNING** [bill title] appears to be subject to the requirement of section 24-34-901, C.R.S. The purpose of this memorandum is to inform you of the requirements specified in these provisions. Our office has communicated these requirements to the sponsor of the bill.

Section 24-34-901 states that "Before any bill is introduced . . . that contains a mandatory continuing education requirement for any occupation or profession, the practice of which requires a state of Colorado license, certificate, or registration, the group or association proposing such mandatory continuing education requirement shall first submit information concerning the need for such a requirement to the office of the executive director of the department of regulatory agencies."

The chair of the committee to which this bill is referred will be notified of the sunrise/sunset requirements.

cc: [bill sponsor]

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Bills Affecting Criminal Sentencing
Memo to Committee Chair

To: [Senator/Representative],
Chair, [Senate/House _____] Committee

From: Office of Legislative Legal Services

Date: [date]

Re: Statutory requirements affecting [Senate/House] Bill [11-], which affects criminal sentencing

You are receiving this notice because you chair the [Senate/House _____] Committee.

[Senate/House Bill 11-] **CONCERNING** [BILL TITLE], has been referred to your committee and **affects criminal sentencing.** This bill appears to be subject to the following statutory requirements:

- **Review by the Director of Research of the Legislative Council – *This requirement is satisfied through the Fiscal Note process.***
  (Section 2-2-701, Colorado Revised Statutes, requires that a bill that affects criminal sentencing and that may result in a net increase or a net decrease in periods of imprisonment in state correctional facilities be subject to this review.)

- **Assignment or referral to the Appropriations Committee in the house of origin**
  (Section 2-2-702, Colorado Revised Statutes, requires that a bill that affects criminal sentencing and that may result in a net increase in periods of imprisonment in state correctional facilities be assigned or referred to the Appropriations committee.)

- **Inclusion of a 5-year statutory appropriation**
  (Section 2-2-703, Colorado Revised Statutes, requires that a bill that increases periods of imprisonment in state correctional facilities include a statutory appropriation of moneys to cover any increased capital construction costs and increased operating costs of the correctional facilities for the first five years in which there is a fiscal impact.)

We have also communicated this information to the sponsor of the bill and the [President of the Senate/Speaker of the House of Representatives].

If you have questions, please contact our office.

CC: [Prime sponsor]

S:\LLS\GA\MEMOS\Mandatory Covers\Criminal_Sentencing_Committee.wpd

Bills Affecting Criminal Sentencing
Memo to Leadership Attached to Bill

To: [1st house leadership]

From: Office of Legislative Legal Services

Date: [ ]

Re: Statutory requirements affecting LLS 11- [Senate/House Bill], which affects criminal sentencing

LLS 11-[___] **CONCERNING** [bill title] **affects criminal sentencing.** This bill appears to be subject to the following statutory requirements:

- **Review by the Director of Research of the Legislative Council –** ***This requirement is satisfied through the Fiscal Note process.***
  (Section 2-2-701, Colorado Revised Statutes, requires that a bill that affects criminal sentencing and that may result in a net increase or a net decrease in periods of imprisonment in state correctional facilities be subject to this review.)

- **Assignment or referral to the Appropriations Committee in the house of origin**
  (Section 2-2-702, Colorado Revised Statutes, requires that a bill that affects criminal sentencing and that may result in a net increase in periods of imprisonment in state correctional facilities be assigned or referred to the Appropriations committee.)

- **Inclusion of a 5-year statutory appropriation**
  (Section 2-2-703, Colorado Revised Statutes, requires that a bill that increases periods of imprisonment in state correctional facilities include a statutory appropriation of moneys to cover any increased capital construction costs and increased operating costs of the correctional facilities for the first five years in which there is a fiscal impact.)

We have also communicated this information to the sponsor of the bill and we will notify the committee chair(s) when the bill is assigned to committee(s).

If you have questions, please contact our office.

CC: [Prime sponsor]

S:\LLS\GA\MEMOS\Mandatory Covers\Criminal_Sentencing_Leadership.wpd

Bills Containing Mandated Health Insurance Coverage
Memo to Committee Chair

TO: [Senator/Representative]
Chair, Committee on _____

FROM: Office of Legislative Legal Services

DATE: [___]

RE: Mandated Health Insurance Coverage Procedures affecting [House/Senate] Bill 11-___

Section #-#-# (____, C.R.S.) of [Senate/House] **11-0000**, **CONCERNING** [bill title], which has been referred to your committee, appears to be subject to the requirements of section 10-16-103, C.R.S., which sets forth special procedures for bills containing mandated health insurance coverage. The purpose of this memorandum is to inform you of the requirements specified in these provisions.

Section 10-16-103 (1) requires every person or organization seeking legislative action that would mandate a health coverage or offering of a health coverage by an insurance carrier as part of individual or group policies to "submit a report to the legislative committee of reference addressing both the social and financial impacts of such coverage . . ."

Our office has communicated these requirements to the sponsor of the bill.

cc: [bill sponsor]

S:\LLS\GA\MEMOS\Mandatory Covers\Health_Insurance_Coverage_Committee.wpd

Bills Affecting Mandated Health Insurance Coverage
Memo to Leadership Attached to Bill

TO: [1st house leadership]

FROM: Office of Legislative Legal Services

DATE: [___]

RE: Mandated Health Insurance Coverage Requirements affecting LLS 11-___

Section #-#-# (____, C.R.S.) of the attached bill, **LLS 11-0000**, **CONCERNING** [bill title] appears to be subject to the requirements of section 10-16-103, C.R.S., which sets forth special procedures for bills containing mandated health insurance coverage. The purpose of this memorandum is to inform you of the requirements specified in these provisions.

Section 10-16-103 (1) requires every person or organization seeking legislative action that would mandate a health coverage or offering of a health coverage by an insurance carrier as part of individual or group policies to "submit a report to the legislative committee of reference addressing both the social and financial impacts of such coverage . . ."

Our office has communicated these requirements to the sponsor of the bill, and we will also notify the chair of the committee to which this bill is referred of these requirements.

cc: [prime sponsor]

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MEMORANDUM

September 25, 1995
(updated January, 2008)

TO: Joint Budget Committee Staff

FROM: Office of Legislative Legal Services

RE: Guidelines for legal research and opinions (JBC)

It has become increasingly common for the JBC staff to seek advice or an opinion from OLLS staff when they face an issue with legal implications. The OLLS welcomes this consultation between staffs. Our office's early involvement in issues that may have statutory or constitutional ramifications often prevents surprises during the legislative process. However, it has become clear that both of our staffs need to develop a common understanding of the time within which the OLLS can reasonably be expected to respond and the kinds of projects the OLLS can reasonably be expected to undertake. These guidelines are an attempt to respond to that need.

1. A realistic time schedule for the project should be mutually worked out and agreed to by JBC and OLLS staff.

    a. A written response is always going to take more time than an oral response. The OLLS has internal procedures for the review of OLLS memos. These usually involve review by a team leader and, in the case of legal opinions or major memos, additional review by other senior attorneys. In some circumstances a conversation between the JBC analyst and the OLLS attorney will be more efficient in conveying the results of the legal research than a written memo.

    b. The OLLS will do its best to accommodate the schedule of the JBC and the JBC staff. However, the JBC staff should understand that OLLS staff must integrate the projects assigned by the JBC with their other duties, particularly at busy times of the year such as interim committee and session deadlines.

    c. At the outset of each project, OLLS staff will try to give JBC staff a realistic estimate of the amount of time required to complete the project in a competent, professional manner. If the two staffs agree to eliminate some research tasks in the interests of using less time, JBC staff should understand that the quality and reliability of the product may decrease.

2. The job of any attorney is to exercise independent professional judgment and give his or her client candid advice. The attorney should assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law. Colorado Rules of Professional Conduct, Rules 1.2 and 2. 1. Often the law is not crystal clear on a particular subject. When the law is not clear, the attorney's job is to present a range of possibilities and to delineate the advantages, disadvantages, and risks associated with each. While OLLS staff will give a clear answer when the law is clear, their professional obligations require them to tell JBC staff when there is no clear answer to the question asked.

3. OLLS attorneys will do a better job of legal research or legal analysis if they have as much information about the problem as possible. JBC staff should explain the events that gave rise to the legal issue thoroughly, even if they believe that many facts are not necessary to

understanding the issue. If the OLLS attorney believes something is irrelevant, he or she will tell the JBC analyst. JBC staff should err on the side of providing more information rather than less.

4. Sometimes the JBC staff refers questions to OLLS staff that are not legal questions per se. The kinds of questions with which OLLS attorneys can be of most help are those that involve applying the rules of statutory or constitutional interpretation, analyzing case law, or applying legislative procedural history. If the question is one of policy, or simply requires the exercise of common sense, the OILS may determine not to treat it as a legal question.

5. If the JBC staff knows which OLLS staff attorney to contact on a particular project, the OLLS staff attorney can be contacted directly. (The OLLS attorney will keep his or her team leader advised of any JBC staff project requests for purposes of workload distribution.). However, the JBC staff may contact Sharon Eubanks or Dan Cartin of the OLLS if the staff is unsure of which OLLS staff attorney to deal with.

OLLS GUIDELINES FOR WORKING WITH LOBBYISTS

NOTE: For purposes of these guidelines, "lobbyist" includes a professional lobbyist, as defined in section 24-6-301 (6), C.R.S., volunteer lobbyist, as defined in section 24-6-301 (7), C.R.S., and state officials and employees registered with the secretary of state who are responsible for lobbying as defined in section 24-6-303.5, C.R.S.

1. PRIORITY OF SERVICE

The Office of Legislative Legal Services (OLLS) is a staff agency of the General Assembly and the Office's first priority is the provision of services directly to members. Therefore, the following guideline will apply to all persons in the OLLS (legislative specialists in the front office and attorneys should be particularly sensitive to this issue):

> **A staff person in the OLLS should always assist a legislator who is seeking help, either in person or by phone, before assisting a lobbyist even if the lobbyist is seeking help at the behest of a legislator. If the staff person is already assisting a lobbyist when the legislator asks for help, the lobbyist should be asked to wait while the legislator is being helped or the lobbyist should be assisted by another staff person. A legislator should not be asked to wait until the staff person is finished assisting a lobbyist.**

2. BILL REQUESTS AND AMENDMENT REQUESTS

Section 2-3-505, C.R.S.,[1] requires that a request for the drafting of a bill be submitted by a legislator, either in writing or orally. If a lobbyist makes a bill request on behalf of a legislator, the OLLS will accept the bill request but will not consider the request "submitted by the legislator" until the legislator has notified the OLLS, either orally or in writing, that he or she will actually sponsor the bill request made by the lobbyist. Unlike prior practice, the OLLS will no longer call a legislator to verify sponsorship on a bill submitted by a lobbyist; however, the OLLS can verify sponsorship on the bill if the OLLS has occasion to speak to the legislator on some other matter. The lobbyist should be responsible for making sure the legislator calls the OLLS and officially "submits" the bill request. The mere acceptance by the OLLS of a bill request from a lobbyist will not be sufficient to meet bill request deadlines; the legislator must contact the OLLS and verify the request prior to the request deadline.

Like bills, a request for the drafting of an amendment must be submitted by a legislator, either in writing or orally. The OLLS may accept a request for an amendment from a lobbyist on behalf of a member only if the lobbyist has the member's authorization, in writing, to make the amendment request. The member's written authorization serves as the member's written request for the drafting of the amendment. A business card or note with the member's authorization and signature is sufficient.

NOTE: The provisions outlined above for bill requests and amendment requests do not apply when a legislator has made the bill request or amendment request himself or herself and has authorized the OLLS to work with a specific lobbyist. The provisions are intended to apply in the situation where a lobbyist is

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[1] **2-3-505. Requests for drafting bills and amendments - confidential nature thereof - lobbying for bills**. (1) All requests made to the office for the drafting of bills or amendments thereto shall be submitted, either in writing or orally, by the legislator, or by the governor or the governor's representative making the request, with a general statement respecting the policies and purposes which the person making the request desires the bill or amendment to accomplish. The office shall draft each bill or amendment to conform to the purposes so stated or to supplementary instructions of the person making the original request. (remainder of section omitted)

making a bill request or amendment request on behalf of a legislator and the OLLS has had no prior contact, either orally or in writing, with the legislator concerning the request.

3. INFORMATION RELATING TO THE DRAFTING OF A BILL OR THE DRAFTING OF AN AMENDMENT

In accordance with section 2-3-505, C.R.S., the OLLS drafter should rely only on information received directly from the bill sponsor or amendment sponsor, either orally or in writing, concerning the specifics relating to the drafting of a bill or an amendment. The OLLS drafter may also rely on information concerning a bill or an amendment provided by a lobbyist who is listed as the contact person on the bill request form, amendment request form, or other written authorization from the sponsor. The OLLS drafter should not rely on information provided by a lobbyist not listed as the contact person unless the drafter has been authorized by the sponsor to rely on such information, either orally or in writing.

4. COPIES OF BILLS AND AMENDMENTS

In accordance with the confidentiality provisions of section 2-3-505, C.R.S., the OLLS will release a copy of a bill or an amendment only to the bill or amendment sponsor. The OLLS may release a copy of a bill or amendment directly to a lobbyist who is working on the bill or a specific amendment and who is listed as the contact person on the bill request form, the amendment request form, or other written authorization from the sponsor. The OLLS may also release a copy to any other lobbyist who the sponsor has authorized on such request form or other written authorization to receive a copy of the bill or amendment. The OLLS should not release a copy of a bill or amendment to any other lobbyist until the OLLS has confirmed with the bill sponsor or amendment sponsor, either orally or in writing, that the sponsor has authorized the lobbyist to receive a copy of the bill or amendment. A lobbyist who is listed as the contact person on the amendment request form or other written authorization from a sponsor may receive copies of only the amendments he or she is working with the sponsor on -- not all amendments to the bill. Lobbyists are advised that a drafter may elect to deliver a bill or amendment to the sponsor prior to releasing a copy to the authorized lobbyist.

NOTE: For purposes of guidelines 2 through 4, the term "bill" includes both bill drafts and finalized bills prior to introduction and the term "amendment" includes both amendment drafts and finalized amendments prior to offering in committee or on the floor. Guidelines 2 through 4 do not apply once a bill is introduced or an amendment is offered by a committee or on the floor.

5. LEGAL MEMORANDA

The OLLS will release a copy of a legal memorandum requested by and prepared for a member only to that member. Because of the confidential nature of the memorandum, the OLLS will release a copy of a memorandum to a lobbyist only if the member has authorized the OLLS, orally or in writing, to provide the lobbyist with a copy. A legal memorandum requested by and prepared for a member is "work product", as defined in section 24-72-202 (6.5), C.R.S., is not a public record, and is subject to the statutory requirements governing work product.

6. COPIES OF OLLS MATERIALS

The OLLS will provide a copy of any material prepared or held by the OLLS (charts, bill summaries, memoranda, preamended bills, court cases, etc.) that is not confidential to any member. The OLLS will provide a copy of any such material to a lobbyist, without charge, if a member has directed the OLLS, either orally or in writing, to provide the lobbyist or if the material is ten or fewer pages in length. If the material exceeds ten pages in length, the OLLS will provide a copy of the material to a lobbyist for

purposes of allowing the lobbyist to copy the material on the public copying machine as allowed by the "Public Records Act", part 2 of article 72 of title 24, Colorado Revised Statutes.

NOTE: This provision does not apply to the Digest of Bills prepared by the OLLS.

7. REQUESTS FOR RESEARCH

The OLLS will take research requests from members either orally or in writing. The OLLS will take a research request from a lobbyist only if the lobbyist has a member's authorization, in writing, to make the research request.

8. USE OF OLLS OFFICE EQUIPMENT BY OR FOR LOBBYISTS

OLLS office equipment including, but not limited to, telephones, copying machines, and FAX machines, can be used by a lobbyist or by an OLLS staff person on a lobbyist's behalf only if the OLLS determines the use is directly related to furthering work by the OLLS for a member. Under no circumstances should OLLS office equipment be used for a lobbyist's personal business. OLLS staff persons who are notaries and whose notary seal is paid for from OLLS funds should not notarize any document for a lobbyist.

9. GIFTS FROM LOBBYISTS AND ATTENDANCE AT LOBBYIST-SPONSORED ACTIVITIES

The provisions of article XXIX of the Colorado constitution (more commonly known as "Amendment 41"), which became effective on December 31, 2006, expressly prohibit a professional lobbyist, personally or on behalf of any other person or entity, from knowingly offering, giving, or arranging to give to certain persons covered by the article, including government employees such as employees of the OLLS, or to such covered persons' immediate family members, any gift or thing of value or any meal, beverage, or other consumable item[2]. Accordingly, and in order to comply with the letter and spirit of Article XXIX, employees of the OLLS are prohibited from receiving, accepting, taking, seeking, or soliciting, directly or indirectly, *any* gift from a lobbyist. The term "gift" has the same meaning as described and used in section 3 of article XXIX. This restriction prohibits OLLS employees from attending lobbyist-sponsored activities or programs, as well, unless the OLLS employee pays for the cost of attending or the office pays the cost on behalf of the employee. However, an OLLS employee may have a meal with a lobbyist so long as the OLLS employee pays for his or her own meal.

OLLS employees attending a conference or meeting the registration fee or other costs for which has been paid by the employee or on the employee's behalf by the state, may partake in meals or activities that are a scheduled part of the conference or meeting and that may be underwritten, in whole or in part, by one or more organizations that may be represented by a lobbyist if: 1) The meal or activity is offered by the sponsor of the program or meeting to every attendee; and 2) it is not given or offered individually to the

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[2] On May 31, 2007, the Denver district court entered a preliminary injunction enjoining the enforcement of sections 2 and 3 of article XXIX. Subsequently, on February 25, 2008, the Colorado Supreme Court held, *inter alia*, that because the independent ethics commission, the body created in article XXIX to enforce the measure, had not yet had an opportunity to act, any as-applied challenges to the provisions of the article are not ripe for adjudication. Accordingly, the district court did not have jurisdiction to grant a preliminary injunction and the district court was directed to vacate the same which it did on April 22, 2008. *Developmental Pathways v. Ritter*, 178 P.3d 524 (Colo. 2008). As of September 2008, there are no new developments concerning this action, and the provisions of article XXIX remain in full force and effect. On October 6, 2008, the commission issued its first position statement for the purpose of clarifying the provisions of section 3 (1) and (2) of article XXIX relating to the receipt of various gifts or other benefits. It is expected that this is the first of additional position statements that will be issued by the commission.

OLLS employee to influence an official act that he or she may perform in the course and scope of his or her public duties.

In certain circumstances, the director of the OLLS may accept or receive on behalf of the entire office a gift of nominal value from a lobbyist that is intended for the benefit and enjoyment of the office as a whole.

If you have any questions regarding compliance with article XXIX, please see the director of the OLLS or your immediate supervisor.

10. DATING LOBBYISTS AND OTHER LOBBYIST RELATIONS

An OLLS staff person is strongly discouraged from dating a lobbyist, especially if the staff person is working directly with the lobbyist on official business.

If, because of a personal relationship with a lobbyist, an OLLS staff person believes that there may be an appearance of impropriety, the OLLS staff person shall disclose the existence of the relationship to the member and to the OLLS.

11. NONCOMPLIANCE WITH GUIDELINES.

Knowing noncompliance with one or more of these guidelines by an OLLS staff person may result in the taking of appropriate disciplinary or remedial action in the interest of preserving the role and integrity of the office. Noncompliance with a guideline will be addressed on a case-by-case basis.

If a lobbyist knowingly asks an OLLS staff person to disregard one of these guidelines, the OLLS staff person should report such request to the director of the OLLS for appropriate action.

Effective December 9, 1994
Revised January, 1996
Revised November, 1999
Revised November, 2000
Revised October, 2007
Revised October, 2008

MEMORANDUM

November 12, 1999

TO: OLLS Staff
FROM: Doug Brown
RE: Attorney General affirms previous opinion relating to what is a revenue-raising bill which must be introduced in the House of Representatives pursuant to Article V, Section 31 of the Colorado Constitution.

As you may know, there has been a controversy about whether bills that reduced taxes could be introduced in the Senate. In 1966, the Attorney General opined that a bill that raises *or reduces* taxes must be introduced in the House of Representatives. This ruling is discussed and applied in detail in the OLLS Drafting Manual, at page 134.

Early this year, outgoing Attorney General Norton was asked to review this opinion, did so, and let the opinion stand. Later in this year, Attorney General Salazar was asked to review this opinion and has now affirmed the 1966 opinion, see copy attached. The opinion also notes that, in recent years, several bills which were required to be introduced in the House were introduced in the Senate and became law. It is not clear why the Attorney General's letter included this latter information.

What does this mean for us? I think it means that we continue to determine whether a bill is a bill for raising revenue according to the traditional rule, stated in the drafting manual as follows:

> Any bill which would increase or decrease state income tax, state sales tax, state use tax, state estate tax, or any other state tax which goes to the general fund and becomes available for general state purposes should be introduced in the House of Representatives.

I am informed that the Senate President and the Speaker of the House intend to follow the traditional interpretation of section 31 affirmed by the Attorney General on November 10. *Accordingly, we should review all the bill requests submitted by a senator as the prime sponsor in the first house to determine whether this issue should be raised with the prime sponsor.*

cc: Speaker George, Majority Leader Dean, Minority Leader Gordon, Representative McPherson, Majority Leader Blickensderfer, Minority Leader Feeley, Senator Teck, Charlie Brown, Kenneth Conahan, JR Rodrigue, Patty Dicks

ATTORNEY GENERAL OF COLORADO
Ken Salazar

November 10, 1999

The Honorable Ray Powers
President of the Senate
State Capitol
Denver, CO 80203

Re: Article V, Section 31 of the Colorado Constitution

Dear Senator Powers;

I have carefully reviewed Attorney General Duke Dunbar's 1966 opinion concluding that bills raising and reducing state tax revenues should originate in the House of Representatives under Article V, Section 31 of the Colorado Constitution. I believe that the reasoning of this opinion remains sound, and therefore, I affirm it.

As a practical matter, I will note that over the years, many tax credit bills originating in the Senate have become law. As recently as 1998, SB 158 expanded an existing tax credit for child care expenses and created a new credit for children, based upon a federal credit. That same year, the General Assembly passed SB 154 which expanded a tax credit for contributions to certain child care facilities and programs, from enterprise zones to the entire state, and SB 85, which created a tax credit for investment in rural technology infrastructure. In 1997, the General Assembly passed SB 76, which established a sales tax exemption for coins and precious metal bullion, which the Governor vetoed. In 1996, the General Assembly adopted SB 193 which revised the enterprise zone law. This bill both increased revenues by reducing existing tax credits, and decreased revenues by adding other kinds of credits in the zones. Legislators argued that this bill was revenue neutral. In 1994, SB 64 concerning credits to promote temporary housing for the homeless and SB 200 concerning the extension of historic property preservation tax credits were both enacted.

Sincerely,
KEN SALAZAR
Attorney General

Executive Committee of the General Assembly
Non-partisan Staff Out-of-Capitol-Complex Meeting Policy

This policy is intended to apply to legislative business meetings with, on behalf of, or at the request of individual legislators, or groups of legislators meeting on an ad hoc basis. Staff persons shall attend such legislative business meetings outside the Capitol complex only if:

1) The staff person's attendance is in compliance with any applicable policy of the Legislative Council, Committee on Legal Services,[1] Legislative Audit Committee, or the Joint Budget Committee and the management of the non partisan staff agency has authorized the staff person's attendance; or

2) The attendance is authorized by the Executive Committee of Legislative Council.

This policy governs the Legislative Council Staff, the Office of Legislative Legal Services, the Office of the State Auditor, and the Joint Budget Committee Staff. This policy does not pertain to meetings of officially established committees of the General Assembly or staff attendance at meetings, seminars, conferences, or workshops that are educational in nature or at which a staff member is representing their office in an official capacity.

Approved by the Executive Committee on March 5, 2001.

[1] For OLLS policy, see 01/02/2001 e-mail "Policy Concerning Out-of-Office Meetings with Members on the following page.

To: &LLS
From: Stephen Miller
Date: 01/02/2001 06:01 PM
Subject: [OLLS] Policy Concerning Out-Of-Office Meetings With Members

On December 19, 2000, Sharon and I presented the office's proposed policy on staff attendance at out-of-office legislative business meetings to the COLS. As some of you may recall, the proposed policy attempted to establish a reasonable constraint on OLLS staff involvement with such meetings by limiting staff attendance to 2-1/2 hours per meeting, including travel time. The proposed policy also left it to the discretion of the team leader to determine whether the staff person should attend an out-of-office meeting outside the 2-1/2 hour time limit.

For the most part, the COLS was not in favor of the policy. The consensus was that the policy tended to formalize out-of-office meetings and actually "push for" or encourage such meetings rather than discourage them. In other words, the COLS felt that the policy probably would have the opposite effect of what was intended. Most COLS members appeared to be opposed to OLLS staff attending *any* out-of-office meetings. These members felt that if out-of-office meetings were going to occur, they should only occur under emergency circumstances. A few members noted that if there were to be a policy, it should apply to OLLS staff rather than to members themselves.

The COLS then suggested that the development of policy regarding OLLS staff attendance at out-of-office meetings should be an OLLS managerial matter rather than a COLS policy matter. After further discussion, however, the COLS agreed to fashion a policy for the OLLS. A motion was made as follows:

> Only upon approval of OLLS management **and** only upon unusual circumstances may an OLLS staff person attend a legislative business meeting outside the *Capitol complex*.

The motion passed 8-1.

The bottom line now is that if an OLLS staff person is requested to attend any legislative business meeting outside the Capitol complex, the circumstances of the meeting must be 'unusual' and the request must be approved by the staff member's team leader. The COLS did not clarify what "unusual" meant, although one member cited an example, "where a member breaks his leg". It appears that "unusual circumstances", as used in the new COLS policy, revolve around emergency and exigent situations rather than inconvenience.

In order to ensure consistent treatment of all requests for OLLS staff to attend meetings outside of the Capitol complex, the office would like team leaders to develop guidelines for determining whether particular circumstances constitute "unusual circumstances" under the policy. If you are requested to attend an out-of-office meeting outside the Capitol complex, please inform the member of the OLLS' policy and ascertain if, under the guidelines, "unusual circumstances" warrant your attendance. You should then discuss the request with your team leader. The office's position under the new COLS policy is that only upon receiving your team leader's prior approval can you attend the out-of-office meeting.

Please feel free to contact anyone on the personnel subcommittee or your team leader concerning this policy and/or the COLS meeting. Thanks.

Steve Miller

COLORADO
HOUSE OF REPRESENTATIVES
STATE CAPITOL
DENVER
80203

January 21, 2000

Douglas G. Brown
Director, Office of Legislative Legal Services
091 State Capitol
Denver, CO 80203

RE: Requests for opinions relating to a procedural issue when the issue has been decided in the course of legislative deliberations

Dear Mr. Brown:

In recent years, we have requested the assistance of the Office of Legislative Legal Services (OLLS) in analyzing and resolving issues of legislative procedure arising in the course of legislative deliberations. This practice has been generally helpful to the legislative process.

However, it is my view that the rules themselves and the processes they prescribe and the prudent observance of the proper role of nonpartisan staff dictate some limits on this practice.

Accordingly, it is my view that when the person in the chair, whether the Speaker, the Speaker 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 made by the person in the chair. Under the rules, such a ruling is final and ought not to be disturbed unless action is taken under House Rule 11 which provides for an appeal from the ruling of the chair.

If a Representative requests an opinion on a procedural issue under these circumstances, please inform the member of this letter and suggest that the member consult with me or the appropriate member of leadership.

It is my understanding that the issuance of these instructions and their content are generally consistent with previous instructions given to guide the OLLS in the conduct of similar functions, specifically instructions from the Executive Committee in February, 1995, which required the OLLS staff to speak with members of the Executive Committee from the requesting member's house prior to the writing of an opinion.

Yours truly,
/s/
Representative Russell George
Speaker of the House of Representatives

MEMORANDUM
February 8, 2000

TO: Senator Powers and Speaker George
FROM: Doug Brown /i/
RE: Response to your letter relating to requests for written legal opinions relating to the separation of powers among the three branches of government.

This memo responds to your letter of January 24, 2000, directing the Office of Legislative Legal Services (OLLS) to notify in writing the President and the Speaker whenever the OLLS receives a request for a written legal opinion relating to the separation of powers among the three branches of government.

The OLLS views the General Assembly as the institutional or organizational client of its staff attorneys; therefore, we are subject to the directives of the General Assembly. In many cases, the General Assembly directs the conduct of the OLLS by statute or legislative rule; these are formal articulations of the interests of the institutional client. As President of the Senate and Speaker of the House of Representatives, the leaders of the legislative institution, your instructions provide useful guidance in the conduct of the activities of the OLLS.

The status of a request for a written legal opinion from the OLLS is not directly addressed by a statute, legislative rule, or other written legislative directive or policy. Therefore, the OLLS has developed procedures related to legal opinions which are analogous to those governing requests for bills and amendments. These informal procedures "filled in a gap" in legislative direction.

Your letter provides the OLLS with explicit instructions relating to a matter not specifically addressed by the General Assembly. Your letter is a written directive relating to the conduct of the OLLS; it also "fills in a gap".

The OLLS intends to implement your instructions in a manner that balances the interests of legislative management with the statutory protections of legislator confidentiality as described in part II. of this memo.

Finally, it should be noted that this procedure parallels the procedure followed for many years by the President and Speaker of the House of Representatives relating to legislators' requests for written legal opinions from the Attorney General.

I. Current Practices

There is no statute, legislative rule, or other legislative directive or policy that directly addresses the status of a request for a written legal opinion from the OLLS. In the absence of such guidance, our general policy has been to follow practices similar to those that govern requests for bills or amendments which are confidential under section 2-3-505, C.R.S. In addition, all documents prepared or assembled in response to a request for a bill or amendment, including legal opinions, are considered work product, as defined in section 24-72-202 (6.5), C.R.S., and are not subject to disclosure under the open records law without the permission of the requesting legislator.

Accordingly, in the absence of a specific directive, we have generally treated requests for legal opinions as being confidential unless the requesting legislator indicates otherwise. This practice seemed consistent with the need to treat legal opinions that are not prepared or assembled in response to a request for a bill or amendment as work product under the open records law, part 2 of article 72 of title 24, C.R.S.

However, the practical application of these specific statutes inevitably results in potential conflict with legitimate legislative management interests. As a result, information relating to bill requests has been released in the interests of better legislative management, so long as the purpose of the statutory provision requiring confidentiality is not contravened.

For example, information about bill requests has been released in response to requests from legislative leadership relating to legislative management concerns, so long as the identity of the requesting legislator is not jeopardized. We have released general information about the *number* of bill requests received so long as the identity of the requesting legislator is not revealed without the legislator's permission. In addition, when asked whether bill requests on *certain subject matters* have been received by the OLLS, we have consulted with the requesting legislator and obtained their permission to release the information that a bill request for a certain subject matter has been received, again honoring a legislator's desire to keep the legislator's identity confidential. Thus, the interests of legislative management have been served while the purpose of the confidentiality statute is not contravened.

In addition, the OLLS has recognized a practical limitation on the confidentiality of written legal opinions. This limit is based on the interests of fair delivery of legal services to all members of the General Assembly by the OLLS. The OLLS is obligated to do the same quality of work for one legislator as it does for another. As a result, a legislator acquires no proprietary interest in a legal opinion prepared at his or her request. Therefore, when a written legal opinion has been requested by a legislator and prepared and the OLLS receives a request for an identical legal opinion from another legislator, the OLLS's practice has been to prepare and deliver an identical legal opinion for any member who requests it.

In summary, the practical application of statutory protections of legislator confidentiality has allowed the consideration of the interests of legislative management and fair administration of the office so long as the underlying purpose of statutory protection of legislator confidentiality has not been contravened.

II. Suggested Implementation

For reasons stated above, this Office intends to implement the instructions as follows:

1. When a legislator requests a written opinion relating to the separation of powers between the three branches of government, this Office will inform the requesting legislator that we will inform the President and Speaker in writing of the request. If the requesting legislator consents, the letter informing the President and Speaker of the request will also identify the requesting legislator. If the requesting legislator so desires, he or she may take the responsibility of so informing the President and Speaker of the request. Otherwise, the letter will describe the request for the written opinion but will not reveal the name of the requesting legislator.

2. The OLLS will not release a final written legal opinion relating to the separation of powers between the three branches of government without the consent of the President if the requesting legislator is a Senator, or the consent of the Speaker if the requesting legislator is a Representative.

3. Requests for written legal opinions relating to other questions of law will continue to be treated by the OLLS in the same manner as described in part I. of this memo.

This method of implementation recognizes legitimate legislative management concerns while avoiding conflict with the purposes of the statutes protecting member confidentiality. It parallels the existing practices of this office in addressing other situations where potentially conflicting interests must be balanced. It is our assumption that your instructions will continue to control the office's conduct of these

matters until this office receives new direction from leadership or appropriate statutes or legislative rules are changed.

January 22, 2001

Douglas G. Brown
Director, Office of Legislative Legal Services
091 State Capitol
Denver, CO 80203

RE: Requirement of notice to the Speaker or President, or both, when the Office of Legislative Legal Services (OLLS) receives a request for a written legal opinion relating to separation of powers

Dear Mr. Brown:

As the President of the Senate and the Speaker of the House, we are committed to the preservation and protection of the integrity of the processes of the Colorado General Assembly. In particular, we are sensitive to the proper exercise of executive, legislative, and judicial powers and are deeply concerned that the activities of the three branches remain within their appropriate spheres as defined by the Colorado Constitution.

Accordingly, we are issuing the following instructions: When the OLLS is requested by a member to issue a written legal opinion relating to the separation of powers among the three branches of government, please inform the member that you must notify the President and the Speaker of the request in writing. You should encourage the member to contact the leader of the member's chamber about the request personally, if possible.

The purpose of the requirement is to inform the President and the Speaker about legal opinions that could implicate the General Assembly's ability to perform its legislative functions. It is not the purpose of this requirement to limit any member's ability to obtain information or advice from the OLLS. However, when an opinion could have significant implications for the legislative institution, it is appropriate for us to provide recommendations on the advisability of seeking a written legal opinion and about its timing or focus.

In addition, these instructions are intended to aid the OLLS in assuring that necessary resources are available to perform the work of the office and assist the members of the legislature with their need for bill drafting services and other services provided by the OLLS.

It is our understanding that the issuance of these instructions and their content are generally consistent with previous instructions given to guide the OLLS in the conduct of similar functions.

Yours truly,

/s/	/s/
Senator Stan Matsunaka	Representative Doug Dean
President of the Senate	Speaker of the House of Representatives

MEMORANDUM

TO: Speaker _____
President _____

FROM: Office of Legislative Legal Services

RE: Request for Legal Opinion Relating to Separation of Powers

In a memorandum dated January 22, 2001, this office was directed to notify you when this office receives a request for a written legal opinion relation to the separation of powers between the three branches of government.

The OLLS has received such a request. Specifically the request is as follows:

_____

_____

_____

We have informed the member that we would notify you in writing of the request and have encouraged the member to contact the leader of the member's chamber.

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Legislative Staff: Toward a New Professional Role

by John Phelps
Clerk, Florida House of Representatives

Volume 5, Number 2 Winter 2000

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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.

Guidelines for When Skipping the Revisor May Be Considered

1. Bills
   a. All bills by first year drafters should be revised.
   b. First year editors should get approval from their head LA before skipping revisor.
   c. All bills and resolutions should be revised at least once.
   d. Before skipping the revisor, both the drafter and the editor should agree that there are no issues that it is important for the revisor to review and it is okay to skip the revisor and the revisor should approve it; or the drafter should show the change to the revisor ahead of time and get approval to skip.

2. Resolutions and Memorials.
   a. You may consider skipping the revisor for resolutions or memorials that are requested every year when there is little or no change to the language each year.
   b. Resolutions honoring deceased members, sports teams or players, or other special groups; creating special days i.e. "nurses day", "Ag day", "single parent day", "frozen dead guy day", etc.; increasing awareness of diseases; encouraging specific behavior; and other resolutions or memorials that do not have the effect of law, will not have any legal impact, and are not politically sensitive may be skipped with the approval of the revisor and drafter.
   c. Resolutions memorializing congress, designating how money will be spent such as "state education fund revenue resolution", "species conservation eligibility list", or "Colorado water conservation board construction fund project eligibility list"; creating interim committees or studies; changing house, senate, or joint rules; and resolutions dealing with a politically sensitive subject should always be revised.

3. When the only change is changing the effective date or repeal date of a section (not the effective date clause in the bill). For example:

   (3) (b) (I) Notwithstanding any provision of subsection (3)(a) of this section to the contrary, for precinct caucuses held in the calendar year commencing January 1, ~~2002~~ 2004, the county clerk and recorder shall furnish without charge to each major political party in the county a preliminary list of the registered electors in the county who are affiliated with that political party as soon as practicable after the date of the Colorado supreme court's approval of the reapportionment plan for senatorial and representative districts of members of the general assembly in the calendar year commencing January 1, ~~2002~~ 2004. The county clerk and recorder shall furnish a supplemental list of such registered electors to each major political party on the Friday preceding the date of the precinct caucus.

   (II) This subsection (3)(b) is repealed, effective July 1, ~~2002~~ 2004.

   Except that, if this type of change is contained in a sunset bill or a tax bill, the bill should always be revised.

3. Technical changes
   a. Changing the no-safety clause to a safety clause provision. However, if you are changing a safety clause to a no-safety clause, other issues such as issues concerning effective dates may arise, and the bill should be revised unless skipping the revisor is approved by the revisor.
   b. You may skip the revisor if changing dollar amounts in an appropriation section. When adding or removing an appropriation section, you may skip the revisor only with the approval of the revisor.

c. You may skip the revisor if correcting spelling errors.

4. Title changes
   a. When a title is changed to reflect the addition or elimination of an appropriation section when the appropriation section was removed previously and the title change was missed the revisor may be skipped but the bill summary should also be checked for conforming amendments.
   b. When adding or removing articles from the title such as "the", "an", "a", etc. and no substantive change is being made, the revisor may be skipped.
   c. Any other more substantive title changes should be seen by the revisor.

OLLS Policies on Green Sheets

December 6, 2005

Purpose of policies and background: OLLS has a statutory duty to keep records regarding bills. Section 2-3-504 (1)(e), C.R.S., states:

> **2-3-504. Duties of office.** (1) The office shall:
>
> (e) Keep on file records concerning legislative bills and the proceedings of the general assembly with respect to such bills; subject indexes of bills introduced at each session of the general assembly; files on each bill prepared for members of the general assembly and the governor; and such documents, pamphlets, or other literature relating to proposed or pending legislation, without undue duplication of material contained in the office of the legislative council or in the supreme court library. All such records and documents shall be made available in the office at reasonable times to the public for reference purposes, unless said records are classed as confidential under this part 5.

One of the primary means of complying with this requirement is the permanent retention of greet sheets. Current practice regarding the types of documents that are attached to green sheets varies widely between teams and from drafter to drafter. One of the purposes of this policy is to promote compliance with OLLS' statutory obligations by establishing uniform requirements and guidelines for attachments to green sheets.

As a preliminary matter, the retention of green sheets is accomplished by filing green sheets in the front office after bills have been introduced. However, often the green sheets are not filed until after the session has ended due to the session work load. Green sheets are historical documents that the office is mandated by statute to save and the office takes the custodianship of these records seriously. Thus, the other purpose of this policy is to specify the procedures to be followed for the filing of green sheets.

Green Sheet Attachments - Required. The following documents shall be attached to each green sheet:

1. The bill draft workflow sheet and bill request yellow sheet;
2. Legislative audit committee partial draft request workflow sheets and pre-CLICS workflow sheets, if applicable;
3. All written drafting instructions from the sponsor and contacts; and
4. All of the different versions of the bill draft, including LAC partial drafts. In order to conserve space, at the legislative editors' discretion, only those pages of a revised bill draft that contain new language in double underlined text or hand-written changes may be attached rather than every page of the full redrafted bill.

Green Sheet Attachments - Guidelines. Any document, whether created pre- or post-introduction, should be attached to a green sheet, if, giving due consideration to limitations on storage space and compliance with the office's record keeping responsibilities, doing so would aid in the office's later reconstruction of the bill's drafting history, including specifically the following:

1. Summaries of legal research conducted with regard to the bill, including case citations instead of hard copies of cases and the file and pathname of legal opinions or memos that originate inside the office; and
2. Hard copies of legal opinions or memos that originate outside the office.

Filing of Green Sheets. Legislative editors shall file a bill's green sheet in the front office as soon as

possible after the bill has been introduced.

MEMORANDUM

TO: OLLS Staff

FROM: Dan Cartin

DATE: September 15, 2011

SUBJECT: Memoranda and Opinion Deadline

This memorandum describes the new OLLS deadline for writing legal memoranda and legal opinions. Adopting a deadline represents an important shift in the office's approach to legal memoranda and legal opinions: A memorandum or opinion request is on the same level as a bill request.

Memo and Opinion Deadline — Memoranda and opinions should be completed no later than two weeks from the date of the request.

- Legislators will be informed that this is our internal deadline and they will expect this level of service.
- A lawyer should try to complete a memorandum or opinion sooner than the deadline.
- Based on a survey of Knowledgebase and discounting several outliers, the average OLLS memorandum and opinion is completed in about 17 days. So while the deadline is an improvement, it is not a significant departure from our current typical practice.
- If a lawyer is unable to meet the deadline, the lawyer should discuss with his or her team leader the reassignment of the memorandum or opinion to another lawyer in the office.

Exceptions — The following exceptions apply to the deadline:

- *"It's a really big issue" exception* — A lawyer may need to take more time to write a particular memorandum or opinion because of its importance and complexity. The amount of additional time needed for a memorandum should be discussed at the trinity meeting, or if there is none, with the lawyer's supervisor.
- *"I'm kinda curious about that issue" exception* — Sometimes a legislator asks for a memorandum or opinion during the session that is unrelated to any proposed or pending legislation, and he or she is indifferent about when it is completed. If so, strict compliance with the deadline is unnecessary, but the memorandum or opinion should be completed no later than one month after the end of session.

LEGAL MEMORANDUM

TO: Interested Persons

FROM: Office of Legislative Legal Services

DATE: May 02, 2011

SUBJECT: Cash funds subject to the limit on uncommitted reserves established in section 24-75-402, C.R.S.[1]

I. Background

The reengrossed version of House Bill 11-1269 would allow entities to reduce by rule the amount of any fees that are set by the General Assembly in statute instead of requiring the entity to seek legislation for the reduction in amount in order to meet the requirements of the limit on uncommitted reserves in section 24-75-402, C.R.S. However, a question has arisen as to whether cash funds that are depositories for charges or assessments, the amount of which are set by the General Assembly in statute, are subject to the uncommitted reserve requirements imposed by section 24-75-402, C.R.S. If not, then the legislation proposed in House Bill 11-1269 is not necessary.

II. Issue Presented

Do the uncommitted reserve requirements for cash funds specified in section 24-75-402, C.R.S., apply to cash funds that are depositories for fees the amount of which is set by the General Assembly in statute?

III. Conclusion

No. The plain meaning of the exception to the definition of the term "fees" in section 24-75-402 (2)(e)(V), C.R.S., makes it clear that any cash funds that are depositories for fees the amount of which is set by the General Assembly in statute are not intended to be subject to the requirements of section 24-75-402, C.R.S.

IV. Analysis

A. Fees subject to the uncommitted reserve requirements.

Section 24-75-402 (3)(c), C.R.S., specifies that the uncommitted reserves of "any cash fund" at the end of a fiscal year are not allowed to exceed a target reserve or alternative reserve balance for that fiscal year. The statute goes on to provide that if the amount of uncommitted reserves of "any cash fund" is greater than the target reserve or alternative reserve, "each entity that collects one or more of the ***fees*** deposited in the cash fund shall by rule or as otherwise provided by law reduce the amount of one or more of said ***fees*** to an amount calculated to result in an amount of uncommitted reserves of the cash fund for the

[1] This legal memorandum 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. OLLS legal memoranda do not represent an official legal position of the General Assembly or the state of Colorado and do not bind the members of the General Assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

current fiscal year that does not exceed the target reserve or alternative reserve balance".

While section 24-75-402, C.R.S., appears at first to require that every cash fund be subject to the uncommitted reserve requirements, the definition of "fees" established in section 24-75-402 (2)(e), C.R.S., operates to limit the application of the uncommitted reserve requirements to cash funds containing specific types of fees. That section defines "fees" as "any moneys collected by an entity; ***except that "fees" does not include***:" a list of moneys that are also frequently deposited in cash funds.[2] Therefore, the broad application of the uncommitted reserve requirements is effectively limited by this definition of "fees". More specifically, section 24-75-402 (2)(e)(V), C.R.S., specifies that "fees" does not include "[a]ny moneys received from charges or assessments, the amount of which are not determined by the entity."

B. Explanation of House Bill 11-1269.

House Bill 11-1269 was recommended by the Legislative Audit Committee to address a perceived problem related to the application of section 24-75-402, C.R.S., to cash funds when the amount of the "fees" deposited into the cash fund is set by the General Assembly in statute. There was a concern raised by the Legislative Audit Committee that the process of introducing and passing legislation to adjust the amount of a specific fee to meet the uncommitted reserve requirements is time consuming, leading the Legislative Audit Committee to support the introduction of legislation to allow for the collecting agency or official to reduce by rule fees the amount of which are set by the General Assembly in statute in order for the cash fund in which such fees are deposited to meet the uncommitted reserve requirements of section 24-75-402, C.R.S. House Bill 11-1269 then led to the question at issue here: do the uncommitted reserve requirements in section 24-75-402, C.R.S., apply to cash funds that are depositories for fees the amount of which are set by the General Assembly in statute?

C. Example of a cash fund that House Bill 11-1269 is intended to address.

An example of a cash fund that House Bill 11-1269 was contemplated to address is the property tax exemption fund created in section 39-2-117 (8), C.R.S. That cash fund is a depository for several filing fees that are required to accompany applications for exemptions of real and personal property from general taxation. Section 39-2-117, C.R.S., specifically provides the amount of the fees required to be

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[2] **24-75-402. Cash funds - limit on uncommitted reserves - reduction in amount of fees - exclusions**. (2) For purposes of this section, unless the context otherwise requires:

(e) "Fees" means any moneys collected by an entity; except that "fees" does not include:

(I) Any moneys collected from sources excluded from state fiscal year spending, as defined in section 24-77-102 (17);

(II) Any moneys received through the imposition of penalties or fines or surcharges imposed on any person convicted of a crime;

(III) Any moneys appropriated from the state general fund;

(IV) Any moneys received through the imposition of taxes;

(V) Any moneys received from charges or assessments, the amount of which are not determined by the entity;

(VI) Any moneys received from gifts or donations;

(VII) Any moneys received from local government grants or contracts;

(VIII) Any moneys received through direct transfers from another entity, an enterprise, or a special purpose authority;

(IX) Any moneys received as interest or other investment income.

paid[3]. The enactment of House Bill 11-1269 would then allow the property tax administrator to reduce by

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[3] **39-2-117. Applications for exemption - review - annual reports - procedures - rules.** (1) (a) (I) Every application filed on or after January 1, 1990, claiming initial exemption of real and personal property from general taxation pursuant to the provisions of sections 39-3-106 to 39-3-113 and 39-3-116 shall be made on forms prescribed and furnished by the administrator, shall contain such information as specified in paragraph (b) of this subsection (1), and shall be signed by the owner of such property or his or her authorized agent under the penalty of perjury in the second degree and, except as otherwise provided in this paragraph (a), ***shall be accompanied by a payment of one hundred seventy-five dollars, which shall be credited to the property tax exemption fund created in subsection (8) of this section***. The administrator shall examine and review each application submitted, and, if it is determined that the exemption therein claimed is justified and in accordance with the intent of the law, the exemption shall be granted, the same to be effective upon such date in the year of application as the administrator shall determine, but in no event shall the exemption apply to any year prior to the year preceding the year in which application is made. The decision of the administrator shall be issued in writing and a copy thereof furnished to the applicant and to the assessor, treasurer, and board of county commissioners of the county in which the property is located. (Emphasis added)

(3) (a) (I) On and after January 1, 1990, and no later than April 15 of each year, every owner of real or personal property for which exemption from general taxation has previously been granted shall file a report with the administrator upon forms furnished by the division, containing such information relative to the exempt property as specified in paragraph (b) of this subsection (3), and signed under the penalty of perjury in the second degree. Each such annual report ***shall be accompanied by a payment of seventy-five dollars, which shall be credited to the property tax exemption fund created in subsection (8) of this section***. Each such annual report filed later than April 15, but prior to July 1, ***shall be accompanied by a late filing fee of two hundred fifty dollars***; except that the administrator shall have the authority to waive all or a portion of the late filing fee for good cause shown as determined by the administrator by rules adopted pursuant to paragraph (b) of subsection (7) of this section. On and after January 1, 1990, every owner of real or personal property for which exemption from general taxation has previously been granted pursuant to the provisions of section 39-3-111 and that is used for any purpose other than the purposes specified in sections 39-3-106 to 39-3-113 for less than two hundred eight hours during the calendar year or if the use of the property for such purposes results in annual gross rental income to such owner of less than ten thousand dollars shall not be required to file any annual report pursuant to the provisions of this subsection (3). In order to claim such exemption, in lieu of such annual report, the owner shall annually file with the administrator a declaration stating that the property is used for such purposes efor less than two hundred eight hours during the calendar year or such use results in annual gross rental income to the owner of less than ten thousand dollars. (Emphasis added)

(3) (a) (III) In the event an annual report is not received by June 1 from an owner of real or personal property for which an exemption was granted for the previous year pursuant to the provisions of section 39-3-106 or 39-3-106.5, the administrator shall give notice in writing to such property owner by June 15 that failure to file a delinquent report during a twelve-month period commencing the following July 1 shall operate as the forfeiture of any right to claim exemption of previously exempt property from general taxation for the year in which such notice is given. Upon the filing of the delinquent annual report, ***a late filing fee of two hundred fifty dollars shall be paid, which shall be credited to the property tax exemption fund created in subsection (8) of this section***; except that the administrator shall have the authority to waive all or a portion of the late filing fee for good cause shown as determined by the administrator by rules adopted pursuant to paragraph (b) of subsection (7) of this section. Failure to file the delinquent annual report within the twelve-month period shall result in the forfeiture of any right to claim exemption of such property from general taxation for the year in which such failure to file the annual report first occurred. The administrator shall review each report filed to determine if the property continues to qualify for exemption, and, if it is determined that the property does not so qualify, the owner of the property shall be notified in writing of the disqualification, and the assessor, treasurer, and board of county commissioners of the county in which the property is located shall also be so notified. (Emphasis added)

(8) All fees collected pursuant to this section shall be transmitted to the state treasurer who shall credit such revenues to the property tax exemption fund, which fund is hereby created in the state treasury. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of the

(continued...)

rule the fee specified in statute by whatever amount necessary to meet the target or alternative reserve for the property tax exemption fund.[4]

D. Plain meaning analysis.

Statutory provisions are to be construed according to their plain and obvious meaning and should not be subjected to strained or forced interpretation. *People v. Browning*, 809 P.2d 1086 (Colo. App. 1990); *People v. Thomas*, 867 P.2d 880 (Colo. 1994). If the language used is clear and unambiguous, its meaning and intent are to be ascertained from the instrument itself by construing the language as it is written. 16 C.J.S. *Constitutional Law*, Section 23, citing *People ex rel. Park Reservoir Co. v. Hinderlinder*, 98 Colo. 505, 57 P.2d 894 (1937). If the language of a statute is plain, its meaning clear, and the intent of the General Assembly may be discerned with reasonable certainty, the statute must be applied as written. *Kerns v. Kerns*, 53 P.3d 1157, 1160 (Colo. 2002).

Applying the plain meaning rule to the uncommitted reserve requirements in section 24-75-402 (3)(c), C.R.S., and the exception to the definition of the term "fees" in section 24-75-402 (2)(e)(V), C.R.S., it follows that the uncommitted reserve requirements do not apply to cash funds that are depositories for moneys received from charges or assessments, the amount of which are not determined by the entity.

Section 24-75-402, C.R.S., does not contain a definition of "charges" or "assessments". In the absence of definitions contained in the text of the statutory section under review, dictionary definitions are helpful in ascertaining the plain meaning of statutory terms[5]. In this context, "charge" is defined to mean an "expenditure or incurred expense ..., payment of costs : money paid out ..., the price demanded for a thing or service"[6] and "assessments" as "amount assessed" and "assess" as "determine the rate or amount of (as a tax, charge, or fine), determine the amount of and impose (as a tax, charge, or fine)"[7]. Under these definitions, "charges or assessments" in this context refers to amounts of money that are due. In the example of the property tax exemption cash fund discussed above, the moneys received and deposited in that cash fund are from filing fees and are a clear example of "charges or assessments".

The definition in question then goes on to say "charges or assessments, ***the amount of which are not determined by the entity.***" Section 24-75-402 (2)(c), C.R.S., defines the term "entity" as "any organ of the legislative, executive, or judicial branch of the government of the state of Colorado." It is this office's understanding that the State Controller interprets this definition of "entity" to include the General Assembly. While that interpretation is reasonable, since the General Assembly is an "organ of the legislative branch of government of the state of Colorado", the application of that interpretation to the exception of the definition of "fees" at issue in this memorandum, would, however, cause an absurd

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[3] (...continued)
administration of this article.

[4] House Bill 11-1269 specifies, "notwithstanding any other law, where the amount of any fee collected by an entity is specifically set forth in statute, the entity shall not be required to seek legislation to initiate a reduction in such fee to meet the requirements of "section 24-75-402, C.R.S., "and instead may reduce such fee by rule."

[5] *See Griego v. People*, 19 P.3d 1, 9 (Colo. 2001) (Colorado Supreme Court consults definitions contained in recognized dictionaries to determine the ordinary meaning of words used in statutes); *Colo. Dept. of Revenue v. Cray Computer Corp.*, 18 P.3d 1277, 1282 (Colo. 2001) (Colorado Supreme Court may refer to a dictionary to determine the ordinary meaning of words used in statutes).

[6] Webster's Third New International Dictionary, unabridged, 2002, page 377.

[7] Webster's Third New International Dictionary, unabridged, 2002, page 131.

result. Evidently it is the State Controller's analysis that cash funds like the property tax exemption fund are subject to the uncommitted reserve requirements because the fees established for that cash fund, and similar cash funds, are determined by the General Assembly in statute, and since the General Assembly is an entity pursuant to the definition of that term, and the General Assembly has determined the amount of the fee, the exception specified in section 24-75-402 (2)(e)(V), C.R.S., does not apply. However, such a reading of the statutory provisions would render the exception under the definition of "fees" at issue in this memorandum meaningless because there would then be no cash fund that would fall under the exception.[8]

It is important to note that the word "entity", as used in this particular exception, is preceded by the word "the". Therefore, it is not just ***any*** entity that is not allowed to determine the fee, it is "***the*** entity". This begs the question: Which "entity" does this exception refer to? Reading the operative part of section 24-75-402 (3)(c), C.R.S., it is clear that "entity", as defined in statute, refers to the body that imposes and collects the fees deposited in a cash fund[9]. In the case of the property tax exemption fund created in section 39-2-117 (8), C.R.S., the property administrator of the division of property taxation in the department of local affairs collects the charges or assessments specified in that section. It follows then that the exception to the definition of "fee" would not apply if the property tax administrator had set the fee. However, since the property tax administrator does not set the amount of the charges or assessments deposited in the property tax exemption fund, but rather the amount was set statutorily by the General Assembly, that particular cash fund, and any similar cash funds, are not subject to the uncommitted reserve requirements of section 24-75-402, C.R.S.

E. Alternate arguments.

An argument could be made that this conclusion is erroneous because there are a number of examples in statute where similar cash funds, those that are depositories for charges or assessments the amount of which were set by the General Assembly in statute, include additional language that allows the managing entity to reduce such fees by rule. For example, section 1-4-303 (2), C.R.S., states:

> Notwithstanding the amount specified for the fee in subsection (1) of this section, the secretary of state by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited.

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[8] "We must read and consider the statute as a whole and interpret it in a manner giving consistent, harmonious, and sensible effect to all of its parts. We should not interpret the statute so as to render any part of it either meaningless or absurd." *Mounkes v. Industrial Claim Appeals Office of State*, ___, P.3d, ___, 2010 WL 2306272 (Colo. App. 2010), citing *Cochran v. West Glenwood Springs Sanitation Dist.*, 223 P.3d 123, 125-26 (Colo. App. 2009) and *Lujan v. Life Care Centers*, 222 P.3d 970, 973 (Colo. App. 2009).

[9] **24-75-402. Cash funds - limit on uncommitted reserves - reduction in amount of fees - exclusions.** (3) (c) For the 2002-03 fiscal year and for each fiscal year thereafter, the uncommitted reserves of any cash fund at the conclusion of any given fiscal year shall not exceed the target reserve for that fiscal year; except that, for any cash fund for which an alternative reserve balance is otherwise specified in the constitution or by law, the uncommitted reserves of said cash fund shall not exceed the alternative reserve balance otherwise specified. If the amount of uncommitted reserves of any cash fund at the conclusion of any given fiscal year exceeds the target reserve or an alternative reserve balance otherwise specified for the cash fund in the constitution or by law, ***each entity that collects one or more of the fees deposited in the cash fund*** shall by rule or as otherwise provided by law reduce the amount of one or more of said fees to an amount calculated to result in an amount of uncommitted reserves of the cash fund for the current fiscal year that does not exceed the target reserve or the alternative reserve balance otherwise specified for the cash fund in the constitution or by law. (Emphasis added)

However, the opposite of this argument is more plausible because, for the most part, this and similar language was added to approximately 110 of these types of cash funds as amendments to the original bill that created the uncommitted reserve requirements[10]. So, the addition of this language, rather than implying that the exception to the definition of "fees" at issue in this memorandum is meaningless, argues that the exception of the definition of "fees" in section 24-75-402 (2)(e)(V), C.R.S., would have exempted all of those approximately 110 different cash funds from the requirements of the uncommitted cash funds reserve section. The uncommitted reserve requirements of section 24-75-402, C.R.S., were enacted for purposes of minimizing the impact on the state's general fund in years when refunds were required to be made out of the general fund by operation of Section 20 of Article X of the state constitution[11]. The revenues in these approximately 110 cash funds would have counted toward the state's fiscal year spending limit. If these particular cash funds had been exempted from the uncommitted reserve requirements by operation of the exception of the definition of "fees" in section 24-75-402 (2)(e)(V), C.R.S., then, assuming those particular cash funds would have had uncommitted reserves in excess of the target reserve, those increased cash fund revenues would have resulted in a larger amount of revenues exceeding the state fiscal year spending limit requiring greater refunds out of the state's general fund. Therefore, in order to avoid such a result, the General Assembly chose to include such language in order to subject those particular cash funds to the requirements and to give the entity a means to comply other than seeking legislation to reduce the charges or assessments.[12]

It should be noted that there are three cash funds listed in section 24-75-402 (5), C.R.S., that are specifically excluded from the uncommitted reserve requirements. Those three cash funds are arguably of the type described in this memorandum. The first, the petroleum storage tank fund created in section 8-20.5-103, C.R.S., and excluded by operation of section 24-75-402 (5)(i), C.R.S., was included as an exclusion in the original enacting legislation of the uncommitted reserve requirements. In fact, while a depository for fees set by the General Assembly in statute, this particular cash fund is perhaps a bit different because the introductory portion of section 8-20.5-103 (1), C.R.S., states that the cash fund "shall be an ***enterprise fund***" and as an enterprise fund its revenues do not count toward the state fiscal year spending limit and therefore do not affect refunds out of the state's general fund. The second, the motorcycle operator safety training fund created in section 43-5-504, C.R.S., and excluded by operation of section 24-75-402 (5)(n), C.R.S. was excluded in 2002. The third, the state commission on judicial performance cash fund created in section 13-5.5-107, C.R.S., and excluded by operation of section 24-75-402 (5)(r), C.R.S., was excluded in 2003. These last two cash funds are clearly cash funds that are depositories for moneys received from charges or assessments the amount of which are not determined by the entity. Again, in these cash funds the amounts are determined by the General Assembly. By operation of the conclusion reached above, those particular cash funds are not subject to the requirements on uncommitted reserves because of section 24-75-402 (2)(e)(V), C.R.S. A reasonable explanation of the

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[10] See Senate Bill 98-194, Session Laws of Colorado 1998, chapter 306. The amendments to the types of cash funds described start on page 1317.

[11] 24-75-201 (2)(a)(I), C.R.S., states, "For state fiscal years commencing before July 1, 2003, any general fund revenues that are designated as state revenues in excess of the constitutional limitation on state fiscal year spending shall be included as unrestricted revenues in the general fund surplus for the fiscal year in which such excess revenues were accrued. Such excess revenues shall be restricted in the next fiscal year to preserve their availability for refund unless voters have authorized the state to retain such excess revenues.".

[12] Since the enactment of Senate Bill 98-194, it appears that 9 other similar cash funds have been created, those that are depositories for fees set by the General Assembly in statute, that include similar language. The same analysis applies to those as well. Had such language not been included, those particular cash funds would have been exempted from the application of the uncommitted reserve requirements by operation of section 24-75-402 (2)(e)(V), C.R.S.

inclusion of those particular funds in the list of exclusions in section 24-75-402 (5), C.R.S., is that the General Assembly, in creating those cash funds, was intending to be abundantly cautious.

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APPENDIX K
SAMPLE EFFECTIVE DATE CLAUSES

K.1 COMMON EFFECTIVE DATE CLAUSES WITH SAFETY CLAUSES

K.1.1 Standard Effective Date Clauses

K.1.1.1 Bill effective on a specified date.

SECTION X. Effective date. This act takes effect July 1, 2012.

K.1.1.2 Bill effective on passage with applicability.

SECTION X. Effective date - applicability. This act takes effect upon passage and applies to offenses committed 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 X. Effective date. This act takes effect upon passage; except that sections 1 and 2 of this act take effect July 1, 2010.

K.1.2.2 Provision within a section takes effect at a different time.

SECTION X. Effective date. This act takes effect July 1, 2011; except that section 3-3-112.3, Colorado Revised Statutes, as enacted 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 X. 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 X. 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 X. 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 within a section contingent on another bill becoming law.

SECTION X. Effective date. This act takes effect upon passage; except that section 24-1-1207 (6)(b)(VII), Colorado Revised Statutes, as enacted 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 X. 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 X. 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 11-24 becomes law, in which case section 25-7-104.5 takes effect on the effective date of this act or Senate Bill 11-24, whichever is later.

K.1.4.2 Portion of bill effective only if another bill does not become law.

SECTION X. 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 X. 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 X. 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.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 X. 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 (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.

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 X. Act subject to petition - effective date.** This act takes effect *Month dd, year* (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 X. Act subject to petition - effective date.** This act takes effect *Month dd, year* (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 *Month dd, year* (insert a fixed date), or on the date of the official declaration of the vote thereon by the governor, whichever is later.

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 X. Act subject to petition - effective date.** This act takes effect July 1, 2015; 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 July 1, 2015.

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 2011 session:

> **SECTION X. 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 Also after the next General Election

> **SECTION X. 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.

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